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TRANSCRIPT OF RECORD,

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914. 1915

No. [redacted] 170

SEABOARD AIR LINE RAILWAY, APPELLANT,

vs.

RAILROAD COMMISSION OF GEORGIA ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

FILED JUNE 3, 1914.

(24,251)

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No. 510.

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a UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Judicial Circuit.

Pleas and Proceedings Had and Done at a Regular Term of the United States Circuit Court of Appeals for the Fifth Circuit, Begun on the First Monday in October, A. D. 1913, at Atlanta, Georgia, Before the Honorable Don A. Pardee, and the Honorable David D. Shelby, Circuit Judges, and the Honorable Rufus E. Foster, District Judge.

SEABOARD AIR LINE RAILWAY, Appellant,
versus
RAILROAD COMMISSION OF GEORGIA et al., Appellees.

b Be it remembered, that heretofore, to-wit, on the 21st day of August, A. D. 1913, a transcript of the record of the above styled cause, pursuant to a writ of error to the Circuit Court of the United States for the Northern District of Georgia, was filed in the office of the Clerk of the said United States Circuit Court of Appeals for the Fifth Circuit, which said transcript was filed and docketed in said Circuit Court of Appeals as No. 2551, as follows:

(*a*)

BILL OF COMPLAINT.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA, NORTHERN DIVISION, HOLDING SESSIONS AT ATLANTA.

To the Honorable the Judges of said Court:

The petition of Seaboard Air Line Railway, complaining of the Railroad Commission of Georgia, Chas. Murphey Candler, George Hillyer, Joseph F. Gray, Paul B. Trammel, James A. Perry, Campbell Wallace and James K. Hines, respectfully shows:

1.

Complainant, Seaboard Air Line Railway, is a corporation, incorporated under and existing by virtue of the laws of the State of Virginia and a citizen of the State of Virginia, residing in Portsmouth, in said State, and a non-resident of the State of Georgia.

That the defendant, the Railroad Commission of Georgia, is a corporation under the laws of the State of Georgia, a citizen of the State of Georgia, resident in said State and in the county of Fulton therein.

That the defendants Chas. Murphey Candler, George Hillyer, Joseph F. Gray, Paul B. Trammel and James A. Perry, composing the members of the Railroad Commission of the State of Georgia, are citizens and residents of the State of Georgia; the defendant Chas. Murphey Candler being a resident of the County of DeKalb; the defendant George Hillyer of the County of Fulton; Joseph F. Gray of the County of Chatham; Paul B. Trammel of the County of Hall and James A. Perry of the County of Gwinnett.

That the defendant Campbell Wallace is a citizen and resident of the State of Georgia in the County of Cobb, and the defendant James K. Hines is a citizen and resident of the State of Georgia in the County of Fulton.

That the defendant Campbell Wallace is the sec-
2 retary of the Railroad Commission of Georgia, and the defendant James K. Hines is the special attorney of the Railroad Commission of Georgia.

2.

That heretofore, to-wit, on or about the first day of August, 1912, the defendant, the Railroad Commission of Georgia, entered the following order, a copy of which was served on complainant:

"Atlanta, August 1, 1912.

"File 10,100.

"In Re: Petition for physical connection at Lawrenceville, Georgia, between the Lawrenceville Branch Railroad Company and the Seaboard Air Line Railway.

"Upon consideration of the record in the above entitled matter, and of the evidence and argument submitted at the hearings had thereon, the commission is of the opinion that physical connection between the Lawrenceville Branch Railroad and the Seaboard Air Line Railway should be provided and maintained at Lawrenceville, Georgia, and it is therefore—

"Ordered, That the Lawrenceville Branch Railroad Company and the Seaboard Air Line Railway shall, within thirty days from this date, file with the Commission blue print showing detailed plans for making at Lawrenceville, Georgia, physical connection between said railways, and maintaining sufficient and necessary interchange track or tracks to take care of frieght traffic moving between said roads.

"Ordered further, that the Lawrenceville Branch Railroad Company and the Seaboard Air Line Railway shall also file with the Commission, within thirty days from this date, detailed estimates of cost of providing such physical connection and interchange track or tracks as indicated in the preceding paragraph of this order.

"By order of the Commission:

(Signed) "CAMPBELL WALLACE, Secretary.

(Signed) "C. M. CANDLER, Chairman."

3.

That thereafter, on September 2nd, 1912, the complainant, complying with the order of the Railroad Commission of Georgia, filed with the said Commission, defendant herein, a blue print and an estimate of cost of making a physical connection between complainant's railroad and the Lawrenceville Branch Railroad; and thereafter, on September 11th, 1912, the Commission entered the following further order in the case, a copy of which was served on complainant:

3

"Atlanta, September 11, 1912.

"File 10,100.

"In Re: Petition for physical connection at Lawrenceville, Georgia, between the Lawrenceville Branch Railroad Company and the Seaboard Air Line Railway.

"Upon consideration of the record in the above entitled matter, and of the evidence and argument submitted at the hearings had thereon, and the Commission being of the opinion that the making and maintaining at Lawrenceville, Georgia, of physical connection between the Lawrenceville Branch Railroad Comapny and the Seaboard Air Line Railway is practicable and to the interest of the public, it is—

"Ordered, that the Lawrenceville Branch Railroad Company and the Seaboard Air Line Railway shall, within four months from this date, provide and maintain at Lawrenceville, Georgia, physical connection between said railways, and sufficient and necessary interchange track or tracks to take care of freight traffic moving between said roads.

"The Commission is of the opinion, and hereby so expresses itself, that the expense incident to the provision and maintenance of this physical connection should be born equally by the two railroad companies named herein.

"Ordered further, that the Lawrenceville Branch Railroad Company and the Seaboard Air Line Railway Company each make report to this Commission within thirty days from this date showing its actings and doings in pursuance of this order.

"By order of the Commission:

(Signed) "CAMPBELL WALLACE, Secretary.

(Signed) "C. M. CANDLER, Chairman."

That prior to the entry of the order of September 11, 1912, complainant contended before the Railroad Commission of Georgia that it should not issue said order of September 11, 1912, or any other order requiring a physical connection between complainant's railway and that of the Lawrenceville Branch Railroad Company; and that on the contention of the complainant evidence was introduced both for and against the order of the Commission, which evidence complainant says wholly failed to show any reason or right for the entry of said order. A copy of the testimony presented to the Commission and filed therewith is attached hereto marked "Exhibit A" and made part hereof.

5.

That thereafter, on or about the 21st day of October, 1912, complainant, not understanding the order of the Commission, defendant herein, and desiring information as to said order, through its District Counsel, wrote a letter to said Railroad Commission, a copy of which is attached hereto marked "Exhibit B" and made part hereof as though fully set out herein and reference thereto prayed as often as may be necessary.

4 6.

That thereafter, on or about the 22nd day of October, 1912, the defendant Chas. Murphey Candler, for and in behalf of the defendant the Railroad Commission of Georgia, and as its chairman, and being authorized thereto by his joint defendants herein, answered the communication of complainant, a copy of which answer is attached hereto marked "Exhibit C" and made part hereof as fully as though copied herein and reference thereto prayed as often as may be necessary.

7.

That complainant being satisfied from the undisputed facts and from the law that said order of September 11, 1912, was illegal, null and void, has declined to comply therewith and has declined to make any physical connection between its railway and that of the Lawrenceville Branch Railroad Company. Complainant had an examination made by its engineering de-

partment with a view of determining the practicability of a connection between its railway and that of the Lawrenceville Branch Railroad Company; that after a careful examination of the ground and a careful estimate of making said proposed connecting track, complainant found that it would cost ten thousand eight hundred and seven dollars and one cent—($10,807.01) to make such connection; that it would be impossible to make a practicable connection between said two railroads for a less sum than said amount, unless the right of way should be donated, or some part thereof, and complainant avers that, so far as it know or can ascertain, it would be compelled to purchase such right of way in order to make said connection . A copy of the estimate of complainant's engineering department showing in detail the amounts required to make said connection, is attached hereto marked "Exhibit E" and made part hereof as fully as though copied herein. Complainant avers that the amounts therein stated are reasonable and proper, and that the items therein stated are necessary and would cost the amounts stated in said "Exhibit E."

5

8.

Complainant further avers that its road does not cross or intersect that of the Lawrenceville Branch Railroad Company, but runs over complainant's road at a height of at least 22 feet.

9.

Complainant further avers that it is engaged in interstate commerce, operating in and through the States of Virginia, North Carolina, South Carolina, Georgia, Alabama and Florida; that it transports freight in and through said States, and is subject to control by the interstate Commerce Commisison of the United States, and makes report thereto as required under the laws of the United States.

10.

Complainant further avers that the Railroad Commission of Georgia, defendant herein, has no jurisdiction, power or right, under the laws of the State of Georgia, to control, burden or interfere with interstate commerce; that, under the laws of the

State of Georgia, the powers of the defendant, the Railroad Commission of Georgia, are limited to such regulations as does not in anywise interfere with the Constitution of the United States and of the laws made in pursuance thereof.

11.

Complainant further shows to your Honors that there is no public interest that would be served by physical connection between the complainant's railway and that of the Lawrenceville Branch Railroad Company; that there is no interchange of traffic between complainant's railway and said Lawrenceville Branch Railroad, and that a physical connection at Lawrenceville in the State of Georgia between complainant's railway and said railroad would not result in any interchange of business between said railroads; that the only effect of such physical connection, if made, would be to permit the switching of freight after it had arrived at Lawrenceville over either of said railroads from one point to another in the town of Lawrenceville; that no freight would move over the Lawrenceville Branch Railroad to Lawrenceville and thence from Lawrenceville to any other point over complainant's road; that
6 no freight would move to Lawrenceville over the Seaboard Air Line Railway and thence over the Lawrenceville Branch Railroad to any other point.

12.

That the purpose, object and effect of a physical connection between the railway of complainant and that of the Lawrenceville Branch Railroad Company is and would be to permit interstate freight shipped from States other than Georgia into Georgia to be switched from the terminus of one to the other of said roads at Lawrenceville to some industrial plant in said town of Lawrenceville; that practically all, if not all, of the freight that might move to an industrial plant over said connecting track, if any such existed, would be the freight originating beyond the limits of the State of Georgia and transported in interstate commerce.

13.

Plaintiff avers that if [it] would be in nowise benefitted by

the construction of a track connecting its railway at Lawrenceville in the State of Georgia with that of the Lawrenceville Branch Railroad Company; that the only effect of constructing said connecting track would be to lessen the revenue now being received by complainant without any compensating increase of revenue whatsoever; that to build, construct and maintain said intersecting track would be a loss to complainant, and if complainant be required, as it is required by the order of the defendant the Railroad Commission of Georgia, to contribute to the construction of said track, it would take the property of complainant without due process of law and without any law, and would deny to complainant the equal protection of the law, and would take at least one half of ten thousand eight hundred and seven dollars and one cent ($10,807.01) of complainant's property without law and without any compensating advantage to complainant, or to the public, and such order of the Railroad Commission of Georgia is unconstitutional and void, without the authority of said Commission and contrary to the Constitution and laws of the United States.

7

14.

Complainant further avers that should said intersecting and connecting track be constructed, it would disarrange the business of complainant conducted by it at Lawrenceville in the State of Georgia; would require complainant to either keep at Lawrenceville at great expense a separate switching crew for the purpose of switching over said intersecting track, and would require complainant to keep at said place an engine for such switching—or, would require complainant to change its schedules on its Logansville Branch which has its terminus at Lawrenceville, and require of complainant additional crews on said Logansville Branch, to the great cost of complainant in either event, to-wit, the sum of ..... dollars ($....) or other large sum per annum; that complainant would receive no benefit, nor would the public be benefitted because of such additional expenditures by complainant, and to require of complainant to make such expenditures would be to take its property without due process of law and without compensation and would deny complainant the equal protection of the laws.

15.

Plaintiff avers that it is not to the interest of the public to have such intersecting track, nor is it to the interest of the public that there be a physical connection between the lines of complainant and of said Lawrenceville Branch Railroad Company; that the only effect of such connection, so far as the public is concerned, would be to make unnecessary a small amount of drayage in the town of Lawrencevile and to deprive complainant of its terminal facilities in Lawrenceville and enable the Lawrenceville Branch Railroad Company to participate in and receive benefits from terminals established by and at the expense of complainant.

16.

That said order of the Railroad Commission of Georgia of date September 11, 1912, is contrary to the laws of the United States and the Constitution thereof and the laws and the Constitution of the State of Georgia, in that said order requires complainant to join in the construction of an inter-
8 change track or tracks between its road and that of the Lawrenceville Branch Railroad Company, there being no freight moving from one road to and over the other road.

17.

That the order of the Railroad Commission of Georgia, defendant herein, is null and void for that it is uncertain and does not fix definitely who shall pay for the construction of the physical connection between complainant's railway and that of the Lawrenceville Branch Railroad Company, and complainant is unable to determine from said order how much of the cost of making such physical connection it is required to pay, the Commission having done no more than to express an opinion as to the methods of paying for the physical connection.

18.

That the order of the Railroad Commission of Georgia of date September 11, 1912, is null and void further because the Commission has not directed any particular route over which is

to be constructed the proposed connecting track, and complainant has been unable to agree with the Lawrenceville Branch Railroad Company as to what is the most practical route over which to connect said interchange track; the order of the Commission being vague, uncertain and indefinite, and leaving to complainant and said Lawrenceville Branch Railroad Company to determine between themselves the payment of the cost of constructing and maintaining said interchange track and the location thereof.

19.

Complainant further avers that it is informed and believes, and believing, so alleges, that it is impossible for it to purchase at any reasonable sum the right of way for constructing an interchange track between its railway and that of the Lawrenceville Branch Railroad Company at or near Lawrenceville, Georgia, and that if such right of way should be procured at any reasonable price it would have to be procured by involuntary proceedings against the owners of the land over which said interchange track would have to be built; and complainant avers, being so advised by its counsel and believing the same to be true, that the property over which said interchange track would or could be constructed is not necessary for the construction or maintenance of complainant's road and its stations, terminal facilities and is not necessary for the accomplishment of the object of its corporation; plaintiff avers that it would require at least three acres of right of way to construct said interchange track, and that the length of said track would include and pass over the property of different persons, some of whom, plaintiff is informed and believes, would not voluntarily sell to complainant at any
9 reasonable price the right of way over their property.

20.

That should the order of the Commission be construed to require complainant to pay one-half of the cost of constructing and maintaining said interchange track, that the same is illegal and deprives complainant of its property without due process of law and denies to complainant the equal protection of the laws, for that the Lawrenceville Branch Railroad Company

would be benefitted by the construction of said interchange track and would be enabled to take from complainant its rights and property, to the great injury of complainant and without any compensating advantage whatsoever to complainant.

21.

Complainant further avers that under the power to regulate commerce among the several States, Congress has authorized the Interstate Commerce Commission to require the construction, maintenance and operation of a switch connection such as is ordered by the Railroad Commission of Georgia in its order hereinbefore set out; that complainant is advised and believes that the power of Congress and the power of the Interstate Commerce Commission granted to it under and by virtue of the Constitution and laws of the United States, is exclusive, and that the Railroad Commission of Georgia has and had no authority to require of complainant that it pay in part for the construction of an interchange track between it and said Lawrenceville Branch Railroad Company.

22.

Complainant avers that the freight that might move from the terminus of complainant on or over said interchange track, or that might move from the terminus of the Lawrenceville Branch Railroad on or over said interchange track, would be all, or practically all, freight moving in interstate commerce, and the regulations for the transportation of such freight is not within the jurisdiction of the Railroad Commission of Georgia; that the Lawrenceville Branch Railroad Company, as well as complainant, is directly and through its connections engaged in interstate commerce and in transporting freight from one State to another and among the States of the United States.

23.

Complainant further avers that under and by virtue of the laws of the State of Georgia, as codified in Section 2667 of the Code of the State of Georgia of 1910, it is provided that should complainant or other railroad corporation fail, omit or

neglect to obey and observe any order, direction or requirement of the defendant the Railroad Commission of Georgia, that such railroad should forfeit to the State of Georgia a sum not more than five thousand dollars ($5,000.00) for each and every offense, the amount to be fixed by the presiding Judge; and it is further provided in said section that every day a violation of such order of the Railroad Commission takes place shall be deemed a separate and distinct offense; plaintiff avers on information and belief that it is the intention of the defendants to begin proceedings for the penalty, under said section of the Code of the State of Georgia against this complainant, and that should such proceedings be begun, it would result in a multiplicity of suits and actions and in an endless number of proceedings, greatly to the injury, loss, damage and harassment of complainant.

24.

Complainant further avers that, under the laws of the State of Georgia, as codified in Section 2668 of the Code of the State of Georgia, 1910, complainant's officers, agents and employees are subject to criminal prosecution for violating, procuring, aiding or abetting the violation of any lawful order of the Railroad Commission of Georgia, and complainant fears and apprehends the beginning of such prosecutions by defendants under said order of September 11, 1912, whereby there would be a multiplicity of actions and prosecutions and criminal proceedings, to the great injury, harm, loss and damage of complainant.

11

25.

Complainant further shows to the Court that the defendant, the Railroad Commission of Georgia, and its co-defendants herein, members thereof, together with its secretary and special attorney, intend and threaten to begin proceedings, suits, actions and prosecutions against complainant for penalties and violations of said order of September 11, 1912; that the validity of said order or its invalidity could be better and more quickly determined in this case and cause than in any suits, actions or prosecutions, and that because of a multiplicity of

suits, actions and prosecutions this Court has jurisdiction of this cause, to determine the rights of complainant herein.

26.

This is a civil action within the equity jurisdiction of the Courts of the United States and of this Court, and the matter in controversy exceeds, exclusive of interest and costs, the sum or value of three thousand dollars ($3,000.00).

27.

That complainant's cause of action hereunder arises under the Constitution and laws of the United States, and is between citizens of different States.

Wherefore, complainant being remediless at law, prays this Court will assume jurisdiction of this cause, and prays for relief, as follows:

(1) That the Court will issue its restraining order, restraining until the further hearing the defendants and each of them, their agents, employees and attorneys from taking any action whatsoever seeking to enforce the order of the Railroad Commission of Georgia of September 11, 1912, hereinbefore set out, and from filing any proceedings thereunder.

(2) That the defendants and each of them be notified to appear at a date named and show cause, if any they have, why they should not be permanently enjoined from enforcing said order or taking any action whatsoever thereunder.

12 (3) That the defendants and each of them, their employees, agents and attorneys, be enjoined from making or giving a certified copy of said order to any person or persons whomsoever to be used in the prosecution of any cause or action against complainant.

(4) That, after final hearing, complainant have its injunction enjoining the defendants, and each of them, their agents, employees and attorneys, from in anywise acting under said order, or giving any certified copy thereof, or applying to any

person or Court for its enforcement, and from taking any action whatsoever under said order.

(5) That upon hearing, said order of the Railroad Commission of September 11, 1912, be decreed to be null and void and of no force and effect, and that the defendants be required to cancel and annul said order of record in the Railroad Commission of Georgia.

(6) That complainant have such other and further relief as it may be entitled in the premises, and as may be necessary for the protection of its rights against said order.

(7) That the writ of subpoena of the United States of America issue, directed to said Railroad Commission of Georgia, a citizen of Georgia, resident in the County of Fulton in said State; to Chas. Murphey Candler, a citizen of Georgia, resident in the County of DeKalb in said State; to George Hillyer, a citizen of Georgia, resident in the County of Fulton in said State; to Joseph F. Gray, a citizen of the State of Georgia, resident in the County of Chatham in said State; to Paul B. Trammel, a citizen of Georgia, resident in the County of Hall in said State; to James A. Perry, a citizen of Georgia, resident in the County of Gwinnett in said State; to Campbell Wallace, a citizen of Georgia, resident in the County of Cobb in said State; to James K. Hines, a citizen of Georgia, resident in the County of Fulton in said State—commanding them and each of them on a certain day to appear and answer to this bill of complaint and to obey and perform such order and decree in the premises as the Court may deem proper and required by the principles of equity and good conscience.

SEABOARD AIR LINE RAILWAY,
13 By W. G. LOVING, District Counsel, and
EDGAR WATKINS, Of Counsel.
WATKINS & LATIMER, Solicitors.

United States of America,
State of Georgia,
County of Fulton.

Personally appeared before the undersigned authority, W. G. Loving, district counsel of complainant, the Seaboard Air Line Railway, and an officer of said railway company author-

ized to make this affidavit, who, being duly sworn, on oath says that he has read the foregoing petition, and that the facts therein stated are true, except where stated on information and belief, and where so stated, he believes them to be true.

W. G. LOVING.

Sworn to and subscribed before me this 10th day of January, 1913.

HOMER WATKINS,
Notary Public Fulton County, Ga.

Filed in clerk's office January 11th, 1913.
O. C. FULLER, Clerk.

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14 ORDER TO SHOW CAUSE.

Read and considered. Let the bill of complainant be filed, and the Court takes jurisdiction thereof. Let the defendant show cause, if any they have, before me, in the United States District Court Room at Atlanta, Georgia, on the 25th day of January, 1913, why the injunction should not issue as prayed.

In open Court, This January 11th, 1913.

WM. T. NEWMAN,
United States Judge.

Filed in Clerk's office January 11, 1913.
O. C. FULLER, Clerk.

15

EXHIBIT "A."

In the Matter of S. G. Brown, et al., Petitioning for Physical Connection Between the Seaboard Air Line Railway and the Lawrenceville Branch, at Lawrenceville, Georgia.

Before the Railroad Commission of Georgia. Hearing, July, 1912, and July 25, 1912.

Present:
All of the Commissioners.
W. G. Loving, Esq., Counsel for Seaboard Air Line.
S. N. Teitlebaum, Stenographer.

A. T. GREEN testified for movant as follows:

I am president and treasurer of the Lawrenceville Oil Manufacturing Company. Lawrenceville has 35 or 40 stores, seven manufacturing enterprises, is the county seat of Gwinnett County, with a population of approximately 2,000 people. The business in my factory is seriously impaired on account of lack of the connection we asked for in this petition. I bought seven or eight hundred tons of cotton seed last season, on the Southern Railroad, which I was forced to sell to other mills, on account of being unable to ship the seed to Lawrenceville over the Lawrenceville Branch Railroad, and then transport such seed to my plant by dray, which would cost me 40 cents per ton. Among the other manufacturing enterprises at Lawrenceville not served by the Lawrenceville Branch, on account of there being no physical connection between said road and the Seaboard Air Line, is the Dixie Paper Mill, Allen Manufacturing Company, Atlanta Tanning & Manufacturing Company, and Lawrenceville Cotton Mills; there being only two plants served by the Lawrenceville branch, viz.: J. A. Ambrose & Company's lumber yard and the Lawrenceville Bottling Works. I am a director in the Lawrenceville Branch Railroad—have $18.00 worth of stock in said road. I know of no effort on the part of the Lawrenceville Branch precipitating this complaint. J. A. Ambrose & Company had eight cars of lumber to arrive at Lawrenceville over the Seaboard

Air Line, and on account of drayage for each car, of about $7.00 refused to receive the lumber, and the Seaboard was forced to bring it back to Atlanta and turn it over to the Southern Railway, which was delivered by the Lawrenceville Branch on his track. The Seaboard has industrial tracks to all of the manufacturing enterprises except the Ambrose plant and the Lawrenceville Bottling Works. I get a rate of 72 cents for cotton seed bought on the Southern Railway, if shipped direct to Lawrenceville by way of the Lawrenceville Branch, whereas the rate would be $2.00 per ton if shipped by the Southern to Atlanta and over the Seaboard to Lawrenceville. The fertilizer part of my business is located on the Lawrenceville Branch Railroad.

S. A. CARTER, testified for movants as follows:

I am lessee of the Lawrenceville Cotton Mills. One-half of the output of our factory goes to points on the Southern R. R. and on account of there being no connection between the roads in question at Lawrenceville, I am forced to dray this entire movement from my factory to the Lawrenceville Branch Railroad depot. I would buy coal amounting to some 60 or 70 cars per year at points touched by the Southern Railroad, if coal could be delivered at my plant without drayage. I pay 65 to 70 cents more per ton than is charged to Atlanta. Our factory consumes about 1800 bales of cotton per year.

My plant is on the Logansville Branch of the Seaboard Air Line and, of course, has connection with the main line of the Seaboard Air Line. This proposed connection, as shown by the blue print, as I understand it, is a continuation of my commercial track. Part of my shipments of outgoing stuff that I would like to ship over the Southern without the extra cost of drayage at Lawrenceville, goes to Winston-Salem and High Point, N. C., both of these points being on the Southern Railway.

16 C. S. STRONG testified for movants as follows:

I am general manager of the Atlanta Tanning & Manufacturing Company. We do not care where the connection is made, just so we get the service asked for. Lawrenceville has had considerable growth in the last 12 months. We are now putting in a complete system of water works, entailing a cost of, approximately, $50,000.00. I feel that we should be at liberty to route our stuff over either road that we desire, and should be given the privilege of shipping our stuff, when manufactured, over either road. I have to haul my stuff that goes over the Southern, and all stuff received over the Southern, one mile from the Lawrenceville Branch depot. I am compelled to buy extract that I use in my tanning process at Brevard, N. C., and have it to haul by dray when it arrives at Lawrenceville. We want an opportunity to buy Virginia coal, and on account of not having this connection, we can not buy it, and being deprived of this opportunity, costs us 50 cents per ton on all coal shipped to Lawrenceville. All my goods to North and South Carolina have to be drayed to the Southern from my plant. I have about one car hides, one car coal and one car extract coming in each week, and about one car of outgoing stuff. My business is considerably handicapped on account of not having this connection we ask for. I tried to get the Southern to give me a rate on Virginia coal and tannic acid in tank cars, via Atlanta which was declined.

MR. MILLER, of the Southern Railway, made the following statement:

As an engineering proposition, it is entirely practicable to make the connection, as shown on the blue print you have before you. It requires a 17 degree curve and a 3-1/2 per cent. grade, at the most difficult points on the proposed line of connection. The blue print you have before you is practicable, and can be operated. I am vice president and general manager of the Lawrenceville Branch. The road is not making any money. I think we made 48 cents, net, during, the month of June of this year. I want to say in this connection, that I have not precipitated this complaint, nor in any way am I responsible for its inception. Commissioner Perry, sometime

before going on the Commission, approached me on the subject. He stated that the people of Lawrenceville desired such service, whereupon I sent an engineer of the Southern Railway to Lawrenceville, who furnished me this blue print, copy of which I sent to Mr. Nix of the Seaboard, with a reply from him that it was not practicable and therefore declined to go into the matter. I proposed to him to bear half of the cost incident to making this connection, and am now willing to do it. The impression among the Seaboard people that I am responsible for this matter being before the Commission is totally in error, and I want it to be understood, as above stated, just how I came to have the blue print prepared and sent to the Seaboard Air Line Railway. The connection asked for would probably result in a loss to the Seaboard Air Line, and an increase to the Lawrenceville Branch R. R. The Lawrenceville Branch R. R. is operated independently of the Southern, and is a different system. The Southern Railroad furnished the money to broaden the Lawrenceville Branch Railroad, in the sum of about $50,000.00.

H. R. ARTMAN, testified on behalf of respondent:

Direct Examination.

By Judge Loving:

Q. Mr. Artman, what position do you hold with the Seaboard Air Line?

A. Assistant engineer.

Q. Have you made an examination of the conditions as they exist at Lawrenceville—

A. Yes, sir.

Q. Between the Seaboard Air Line Railway and the Lawrenceville Branch Railroad?

A. Yes, sir; the physical conditions.

Q. Have you made any plat, or has your office made any plat, in regard to that investigation?

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A. Yes, sir.

Q. Does that represent the investigation, the surveys that were made there? (Referring to a map.)

A. Yes, sir.

Q. Mr. Artman, will you please explain to the Commission the location of the three railroads at Lawrenceville?

A. This line here, the heavier line here, represents the Seaboard Air Line main line.

Q. Atlanta to Athens?

A. Atlanta to Monroe. This direction is north to Monroe, and this direction south to Atlanta, this broken line through here represents the Lawrenceville Branch Railroad north, or in that direction, to Suwanee, and terminating here on the hill—which doesn't show here—at Lawrenceville; at this point right here, is where the connection with the Logansville Branch, the branch of the Seaboard known as the Logansville Branch, beings [begins]—it connects with the Seaboard main line at this point, goes in this direction down towards Logansville, with another connecting track, which the connection isn't shown, and is beyond the paper. Now, on the Lawrenceville Branch Railroad, it has an overhead crossing of the Lawrenceville Branch with the Seaboard Air Line, this representing the overhead crossing, which is some twenty-four or five feet, I should say, from the top of the rail of the Seaboard track to the top of the rail of the Lawrenceville Branch Railroad tracks. Judge, did you wish me to go into the explanation of these connections? Where it could be done?

Q. Where it was proposed, first, where it was according to the map furnished by Mr. Miller?

A. This is the proposed connection, which I have shown in light lines, as they were proposed on Mr. Miller's map or the map that Mr. Miller had submitted here or that was submitted, beginning right here by the coal wharf of the Lawrenceville Branch and extending around the edge of that hill and coming into the end, or practically the end, of our spur, from the Logansville Branch into the Lawrenceville Cotton Mills, connecting just about this point, and being only a few feet from the end of the track down there. Then it was proposed to use our spur—by "our" I refer to the Seaboard spur—from the end or from the connecting point on down to the switch connecting with the Lawrenceville Branch, and then, of course, that gives a physical connection between all of the roads and branches.

Q. Now, Mr. Artman, point out to the gentlemen the tentative surveys that you made there for a better connection?

A. Well, there's also shown on this map, in another light line, a connection leading off here and following around further out—coming on down and connecting in down here; this

is a sketch proposition on this map and isn't absolutely accurate, I should say; as to what it would be on the ground, in reality, this curve here would have to be lightened up, and we would have to revise—by "lightening up" I mean, revise this track in here to make what I consider a feasible—well, a track that can be operated successfully and economically. In addition—you didn't want me to explain that point, do you, it's not on the map here, it isn't shown?

Q. I want to ask you if that's the map that was furnished to you by Mr. Miller, and if that indicates the proposition as you originally understood it?

A. Yes.

Q. When you went on the ground?

A. Yes, this is just like the map that was furnished me by Mr. Miller.

Q. Well, he furnished you several copies?

A. Yes, he did.

(By Commissioner Perry:)

Q. This is where I understood you proposed to furnish the connection (indicating)?

A. Yes, further out towards the Logansville branch more.

(By Judge Loving:)

Q. Mr. Artman, will you state what the curve and grade, as shown by that map furnished you by Mr. Miller,
18 of the Southern Company, show for this physical connection?

A. I'll have to refer to the map; it shows a seventeen degree curve, and a maximum of three and a half per cent grade.

Q. At which end is that?

A. That's at the east end of the connection with the Lawrenceville Branch Railroad.

Q. What does it show at the west end—the connection with the Logansville branch?

A. Do you mean on their proposed connection or on the passing track?

Q. No, I'm asking you on that proposed connection what it shows?

A. Just up to the point—that shows also a seventeen degree curve.

Q. What is the grade there?

A. I'll have to scale that and see; that shows the maximum grade of three and a half per cent.

Commissioner Gray:

As I understand, you have admitted, or practiacally admitted, that a connection between the Seaboard Air Line and the Lawrenceville Branch is—

Judge Loving:

I admit that the law provides that a physical connection can be forced.

Commissioner Gray:

Your exact language, if I remember it, was that there wasn't any question as to the people of Lawrenceville being entitled to that connection, that they ought to have it, if it's practicable to give it to them.'

Judge Loving:

There's no question but that the gentlemen made out a case that their business would be advanced—that the business they were engaged in would be accommodated, their business would be advanced and it would be an accommodation to them. I felt that, inasmuch as it could be forced, that we concede that, and if the Commission in its judgment felt that way, that was a case where that should be done, I didn't think it would be proper for us to take the position of contesting it, provided we would be protected in it, when the connection was made, after hearing the evidence.

Commissioner Gray:

You are not opposing the people of Lawrenceville in seeking to obtain a physical connection between the Seaboard and the Lawrenceville Branch?

Judge Loving:

Yes, sir; with this proposed connection, on the ground that it is unsafe.

Commissioner Gray:

But you are not opposing the general proposition?

Judge Loving:

That's all we had to oppose, that's all that was submitted to us.

Commissioner Gray:

Let's see if I can get you to answer this—you are not opposing the idea—I'll put it that way—that these people should have a connection?

Judge Loving:

I am conceding that they can force a connection, Mr. Gray.

Commissioner Gray:

But do you concede they are entitled to the connection?

Judge Loving:

No, sir; I don't concede that, unless we are protected in it.

Commissioner Gray:

Let's leave out the protection, for a moment—

Judge Loving:

That's the most important point to us.

Commissioner Gray:

I'll get to that in a minute, I'm trying to get at the idea, the people are entitled to a physical connection; now, if we can agree on that, then I have got a suggestion to make to you—

in other words, if you agree that the business at
19 Lawrenceville is such as to entitle the people at Lawrenceville so [to] a physical connection between the Seaboard Air Line and the Lawrenceville Branch, then I have got a suggestion to make to you.

Judge Loving:

I can't concede that, Mr. Gray, unless coupled with other things.

Commissioner Gray:

Let's assume that they are entitled to it—let's just assume, for the sake of argument, that they are entitled to it; why go into all this evidence here, blue prints and plans and costs and

so forth, when the Railroad Commission have got an engineer of its own that it can send down and make the investigation on the ground and make the engineer's report, conferring if necessary, with your engineer and the Southern Railway's engineer, giving to the Commission the benefit of that conference and the benefit of his own expert judgment on which the Commission can proceed? That being true, what is there left for you to discuss except the legal aspect as to which road should pay for it?

Judge Loving:

That's what I was suggesting here, was to aid the Commission; I had an engineer to make out a tentative plan by which the connection could safely be made; but we are summoned to meet the proposition by this map here, and we want to show that that is wholly impractical and unsafe.

Commissioner Perry:

The evidence shows, Judge, that they don't care where you make it, all they want is the connection—they don't care where you make it; now it's a question of the point at which it shall be made; that being true, it strikes me that Commissioner Gray's suggestion is of some merit.

Judge Loving:

But the gentlemen will recall that the witnesses testifying said that that was a practical propositon; now, I'm trying to rebut that.

Commissioner Gray:

Well, that's a practical proposition, you know, and we have our own engineer, and it looks like we have got to send him down there anyhow, and if we do, I would like for him, I think, to have a conference with your engineer and the other engineer and go over it in that way.

Q. I want to ask him if that would be a safe connection, with the switches there, the trains could be safely operated?

A. In my opinion, I don't think so.

Q. Well, for what reason?

A. Well, the grade, first, is too steep to permit of making the proper couplings to cars that would necessarily have to

be coupled to on this track, and the curve is so stiff that there is danger of what we call the engine climbing the rail, that is, working up over the rail; and, of course, there is also danger in cars running down this grade and running out on the other tracks and blocking them or causing collisions.

Q. Now, Mr. Artman, did you make any survey of your own there—a tentative survey for this connection?

A. No, I didn't personally.

Q. Did you have it made by your office?

A. Yes, sir.

Q. Is that shown on the map that you have just explained to the Commission?

A. Yes, sir; in that light line.

(By Commissioner Gray:)

Q. In that line that you traced up there, the faint line further up there?

A. Yes, sir.

20 (By Judge Loving:)

Does that represent, in your opinion, a location which would provide a safe connection between the two tracks?

A. Well, really, I don't consider that anything—it's a connection that I think could be operated, but I don't consider it absolutely safe, from the construction of the track, because we have the same elevation to overcome in either of the two propositions, and the only way to reduce the grade and overcome that elevation is to increase the length of the track, which I have done to some extent, by bring [bringing] it further down in here and connecting it.

(By Commissioner Candler:)

Q. What is the curvature there?

A. I think it's 12.30.

Q. What is the maximum grade?

A. The grade, I didn't run out, though it's my opinion that a two and a half per cent grade can be had on that line; I actually had no level run over the line.

Q. What did you run?

A. Well, I don't know, Mr. Chairman, what was run up there, I don't know whether this line was located from meas-

urements from this Southern line or whether the general topography was made and platted on this map.

Q. You don't know whether there was any actual survey made of that or not?

A. No, I am rather inclined to think there was no actual survey made, with any accuracy, but, of course, the location here is practically correct.

(By Judge Loving:)

Q. Well, you went over the ground, didn't you, in person?

A. Yes, sir.

Q. Mr. Artman, did you make any estimate of the cost of that connection, according to this tentative survey that was made?

A. The one that I made?

Q. Yes?

A. Yes, sir; an approximate estimate.

Q. What was that approximate estimate?

A. Between thirty-two and thirty-three hundred dollars, if I remember correctly.

(By Chairman Candler:)

Q. You mean of the one you suggest there as easier than the other?

A. Yes, sir.

Q. Did you make any estimate of the cost of the first one?

A. No, sir; I didn't.

(By Commissioner Perry:)

Q. Nothing figured for right of way in there, was there?

A. No, I figured nothing for right of way in there, as I remember—the grading and track materials.

Commissioner Gray:

I have no questions except to repeat my other suggestion; as I understand, Lawrenceville people have asked for a physical connection between the Seaboard and Lawrenceville Branch; that's true, isn't it? I get the impression that the testimony has shown it seems to be admitted that the connection is desirable, that it ought to be made; now, let's assume that to be true. The effect of this gentleman's testimony is,

as I understand it, that the connection proposed by the Southern Railway is impractical, and considerably expensive, and that he suggests another connection there, that is practical and probably less expensive. All right, now, if it be true that that connection is desirable and should be made there, I make the point that it is scarcely necessary to go into all of these details, but that we could get all that information from the profiles and the records here—from the records of the Commission's engineer, and the only question that is really before us now is the legal question involving by whom the expenses of the work should be borne, whether by the Seaboard Air Line or the Southern Railway or what.

21 Judge Loving:

You see, we had to meet this testimony that that was a practical proposition—we wanted to show that it isn't. One minute, before I leave the stand—I would like to say that in neither of these two propositions has there been provided sufficient facility to take care of the business to be interchanged between the two roads, insofar as either of the two propositions merely provide for a physical connection, and they do not provide for a track on which to place cars for receipt or delivery to either of the roads, from either of the roads, of course.

(By Commissioner Gray:)

Q. Well, the petition, even if it doesn't so specify, would contemplate that, in addition to the physical connection, the other facilities should go along with it, to make the physical connection of some value, wouldn't it?

A. Exactly; but the point I was making, that such additional facilities are not provided for in the estimate of $3200.00 or thereabouts; neither is it provided in the estimate given by Mr. Miller a few days ago, I don't think.

(By Commissioner Perry:)

Q. What was his estimate?

A. $1800.00, I think; in the neighborhood of $1800.

Commissioner Hillyer:

Is that stated there?

Judge Loving:

He simply stated it.

(By Commissioner Hillyer:)

Q. Does that Logansville Branch use the Seaboard depot, or has it a depot of its own?

A. They use the Seaboard depot at Lawrenceville.

(By Commissioner Perry:)

Q. You are acquainted with the main line from here to Logansville and beyond—been over it all, have you?

A. Yes, sir.

Q. What is the highest curve on that line from here to Lawrenceville, or from here to Auburn?

A. I can't state positively.

Q. What do you think it is?

A. Oh, I can be almost positive that it isn't over an eight degree curve, and I don't think, over a six.

G. R. CARLTON, testified in behalf of respondent as follows:

Direct Examination.

By Judge Loving:

Q. Mr. Carlton, will you state what position you hold with the Seaboard?

A. Superintendent.

Q. Superintendent of the Third Division?

A. Yes, sir.

Q. Lawrenceville in your division?

A. Yes, sir.

Q. Mr. Carlton, are you familiar with conditions as they exist at Lawrenceville?

A. I am.

Q. In relation to the Seaboard, and in relation to this physical connection which is proposed between the Seaboard Air Line Railway and the Lawrenceville Branch?

A. Yes, sir.

Q. Will you state to the Commission, if that physical connection is made, how it will affect the Seaboard, from a business standpoint?

A. Well, of course, the physical connection with the Lawrenceville Branch Railroad with the Seaboard means more work for the Seaboard Air Line and less revenue; we have got the burden of the switching to do, and a connection of that kind is dangerous to operate on, especially connected up with an industrial track, where he has got cars standing, unloading and loading, and on a hillside of that kind, there's going to be cars get away, and if that track is put in there, the Lawrenceville Branch or the Seaboard will sometime have to pay for the boiler room of that cotton mill.

(By Chairman Candler:)

Q. You are talking of that first connection, with the industrial track?

A. Yes, sir. You can get a track in there that
22 can be operated successfully, but that ain't the case; I have had twenty-seven years experience, and have got some tracks in as bad as that, and we have to pick up cars every once in a while getting away, and it is impossible to ever operate any size engines over this track.

(By Judge Loving:)

A. What I asked you, Mr. Carlton, if this connection is made, how it will affect the business of the two roads—I mean the business there, transportation of freight, of raw materials to these plants there and of the finished product away?

A. Well, Judge, I don't know whether I'm prepared just to answer that question correctly; of course, we'll have to—the industries all on our line, we'll have to do the entire switching from those and deliver to the Lawrenceville Branch Railroad.

Q. Well, if that connection is made, business that is now being hauled over the Seaboard, will you lose any of that or not?

A. We'll lose the revenue off that and have to do the switching for a small charge.

Q. Well, where will that revenue go?

A. Go to the Lawrenceville Branch Railroad, I presume.

(By Chairman Candler:)

Q. In other words, you have a monopoly of that business now and won't have if a connection is made?

A. We'll have to do the work for the other line.

Q. That isn't what the Judge was after—that you will have to give up business that you now absolutely control?

A. Yes, sir.

Chairman Candler:

I think we all know that, and that's probably why they want it and that's the public policy.

(By Judge Loving:)

Q. Now, Mr. Carlton, will you state—have you made any estimate of the cost there, the probable cost of that physical connection?

A. No, sir; I haven't.

Q. Well, in addition to the connection, the actual connection, what side tracks will be necessary there, to safely operate?

A. Why, we'll have to have what we call interchange tracks, storage tracks, whereby each road can set cars on them to deliver and receive—we couldn't afford to stand cars on that connection for each road to pick up, there would have to be an additional track, either paralleling the Lawrenceville Branch or the Seaboard, to deliver and receive on; we have that at all other connections.

Q. Now, Mr. Carlton, I want to direct your attention to the costs of transferring, switching or transferring, if this connection is established, and how it will be done.

A. Well, we, of course—the entire switching would have to be done with our Logansville Branch crew, and it will probably necessitate changing the schedules over there, it will be two or three, maybe three or four, hours switching there a day, our main line engines, local freight trains, can't go into those tracks.

Q. Well, will you be able to do the switching with your engine from your Logansville train and maintain your present schedules on that branch?

A. No, sir, we can't do that.

Q. Well, how will you manage it?

A. We'll have to reverse the lay-over from Logansville and lay over at Lawrenceville; we have got a seven-hour lay-over at Logansville, that will practically have to be reversed and have the crew from Logansville do it instead of Lawrenceville, and the seven hours they are laying over, they will have to do the switching, and then we'll have, of course, to look

out for the sixteen hour law with this crew, and make two trips a day on this branch for the accommodation of the people at Logansville.

Q. Have you made any calculation as to what the cost of that switching will be to you or to your road?

A. No, sir, I haven't; I haven't figured that.

Q. Can it be done at the regular switching rate?

A. Well, the regular switching rate, of course, it will be a loss to the Seaboard, $2.00 a car, and pay rental on the cars of 45 cents a day on the cars.

Q. You couldn't afford to maintain a switch en-
23 gine and crew there, just for the business there, the switching business at that point, could you?

A. No, sir; we couldn't.

Q. Therefore, you would have to do it with the crew from the Logansville branch?

A. It would have to be done with the crew from the Logansville Branch.

Q. Mr. Carlton, have you considered whether this physical connection will furnish any new business to the Seaboard?

A. No, sir; I can't figure out where it will furnish any business to the Seaboard whatever.

Q. It was suggested that the lumber mill located on the Lawrenceville Branch might furnish some business to the Seaboard; what do you know about that?

A. Well, if he does, he'll have to change his billhead, because he's got those printed not to ship via Seaboard Air Line under any circumstances—something to that effect; if he would do it, he probably could give us a little business.

Q. The Seaboard Air Line built the industrial tracks there to those various plants?

A. We did.

(By Commissioner Hillyer:)

Q. Does the Seaboard run under this branch road, where they cross, where that crossing occurs, or how?

A. The Seaboard runs under it.

Q. That increases the grade necessarily in the local approaches?

A. Yes, sir. The Lawrenceville Branch is twenty-two or five feet higher than the Seaboard Air Line tracks.

(By Commissioner Perry:)

Q. Mr. Carlton, this excuse of the lumber man for not routing stuff over the Seaboard is because he has it all to dray up to his plant?

A. I presume so, that that's it; he got mad at something about a warehouse that he wanted us to let him have cheaper than we wanted to rent it, one thing he fell out with us about.

F. TAYLOR testified in behalf of respondent as follows:

Direct Examination.

By Judge Loving:

Q. What position do you hold with the Seaboard Air Line Railway, Mr. Taylor?

A. Agent.

Q. Agent at Lawrenceville?

A. Yes, sir.

Q. How long have you been there, Mr. Taylor?

A. About four years.

Q. Will you state to the Commission, if you are familiar with the conditions as they exist there, and especially in relation to this proposed physical connection between the Lawrenceville Branch Railroad and the Seaboard?

A. Yes, sir; I think I am.

Q. Are you familiar with the location of the proposed—familiar with the location proposed by the map made by the engineer of the Southern Railroad, which I hand you?

A. Yes, sir; I am familiar with it.

Q. Do you think that proposed connection practical and safe of operation?

A. Well, I couldn't say as to that, I'm not familiar with that part of it.

Q. If this physical connection is made, Mr. Taylor, what will be the result of it, from a business standpoint, to the Seaboard Air Line?

A. It will make a considerable decrease in our revenue.

Q. Why do you say that?

A. I have that information from our business men, that's what they say—to have it sent that way.

Q. Have it sent how?

A. Over the Southern and Lawrenceville Branch.

Q. Do you mean the business coming in, as well as going out?

A. Yes, sir; that's what they tell me.

(By Chairman Candler:)

Q. Do they give any reason for it?

A. No, sir; not that I am familiar with.

24 (By Judge Loving:)

Will it result in any new business from any other source to the Seaboard?

A. No, sir; I couldn't figure out any, I don't know of any way at all that it would bring to us any new business.

(By Commissioner Gray:)

Q. How many industries on the Seaboard?

A. Seven, I think.

Q. How many on the Lawrenceville Branch?

A. One—there's two, I think, the Lawrenceville Bottling Works is near the Lawrenceville Branch.

Q. Wouldn't the fact that the majority of those industries are located on the Seaboard, wouldn't that suggest that they would naturally prefer the Seaboard?

A. I can only tell you what they have told me—in fact, the testimony they gave here and what they told me personally; this coal business, they want to get that from the Virginia coal fields, they want that over the Southern.

Q. Aren't they obligated, on account of their side-tracks, to give you all of the competitive business?

A. They certainly are, but they are not doing it—I know of a case of that kind right now, and they are not doing it.

(By Commissioner Hillyer:)

Q. Has what you call the Lawrenceville Branch got a depot of their own?

A. Yes, sir.

Q. Where is that located? Perhaps you can just tell me verbally, I don't think it is located on these maps; is it located north of the main line of the Seaboard—the train comes in, for instance, from Suwanee, it crosses that high bridge and then comes down to this depot?

A. Yes, sir.

(By Judge Loving:)

Q. Do you know about the rate on coal from the Virginia mines, over the Southern, by way of Atlanta, to your place?

A. Yes, sir; $2.15 per ton is the rate on it.

Q. Do you know of any other rate by an Eastern connection?

A. No, sir.

Q. That is an available rate, is it?

A. Yes, sir.

Q. Published rate, in effect now?

A. Yes, sir.

25 EXHIBIT "B."

Physical Connection Between Seaboard Air Line Railway and Lawrenceville Branch at Lawrenceville.

Atlanta, Ga., October 21, 1912.

To the Honorable Railroad Commission of Georgia:

On behalf of the Seaboard Air Line Railway, and before responding to the order entered in the above case on September 11, 1912, I respectfully ask for information on the following points:

1. Did the Commission by its order intend to provide a physical connection between the Lawrenceville Branch Railroad and the main line of the Seaboard Air Line Railway at Lawrenceville, Georgia, or did it intend to provide such connection between said Lawrenceville Branch Railroad and the Logansville Branch, which is operated by the Seaboard and extends from Lawrenceville to Logansville?

2. Did the Commission adopt any map or blue print of survey showing at what point on the main line of the Seaboard Air Line Railway, or on the said Logansville Branch, as well as at what point on the said Lawrenceville Branch Railroad the physical connection should be made?

3. If such map or blue print was adopted by the Commis-

sion, will a copy thereof be furnished the Seaboard Air Line Railway? In the meantime, a further extension of ten days is requested for the Seaboard Air Line Railway to make report to the Commission in this matter, which will enable the undersigned to take the matter up with the officials of the Seaboard Air Line Railway at Portsmouth, Virginia, after receiving information on the points above mentioned, and determine on what course the Seaboard Air Line Railway will take in the premises.

Respectfully submitted,
(Signed) W. G. LOVING,
District Counsel Seaboard Air Line Railway.

26 EXHIBIT "C."

Atlanta, October 22, 1912.
File 10100.

Judge W. G. Loving, District Counsel,
Seaboard Air Line Railway,
Atlanta, Georgia.

Dear Sir:

I have your favor of the 21st directed to the Railroad Commission and asking for information as to three specific points in reference to the order of the Commission dated September 11th, 1912, in regard to physical connection between the Seaboard Air Line Railway and the Lawrenceville Branch Railroad at Lawrenceville, Georgia, and in reply to your first inquiry beg to state that I think you will find by reference to the order that the Commission did not specifically require that the connection should be between the Lawrenceville Branch and the Logansville Branch, or between the Lawrenceville Branch and the main line of the Seaboard. I construe the order to mean, and I am quite sure the Commission at the time intended that whether or not this connection should be made between the main line and the Lawrenceville Branch or between the Logansville Branch of the Seaboard and the Lawrenceville Branch was left to the discretion of the two companies to be exercised according to the physical conditions, cost of making the same and the practicability of each. My idea is that the provision of the order directing that the two respondents should make report to the Commission within thirty days

of the date of the order showing the actings and doings was primarily intended to secure information as to whether or not it was your intention to comply with the order, secondarily and desirably to know what specific connection the two parties may have found the most economical and feasible.

Answering the second inquiry, the Commission did not adopt any map or blue print of survey showing at what point on the main line of the Seaboard or on either of the branch lines the physical connections should be made, it being the intention of the Commission to leave it to the respondents to carry out the order in good faith, and in such manner as would accomplish in the most economical and satisfactory manner a physical connection between the roads at Lawrenceville.

27 The above remarks as to the blue print or map of survey answers the first part of your third inquiry. I note you ask a further extension of ten days in which the Seaboard shall have the right to make report. This request will have to be referred to the Commission and I will do so at its meeting on Thursday. In this connection permit me to say that Mr. Miller has shown to me blue print of a new survey which the Lawrenceville Branch Railroad has had made providing for a connection with your main line, and informs me that according to his engineering estimates it is the most economical and most feasible route. I suggested to him last week that he at once take the matter up with the Seaboard so as to see if both roads could agree on this or some substitute plan and report to the Commission at once.

I am this morning in receipt of a telegram from Judge Watts in which he asks a rehearing in this matter in behalf of the Seaboard Air Line Railway. This request will have to go before the Commission and I am so writing him today.

Yours very truly,

(Signed) C. M. CANDLER, Chairman.

CMC-D

28 EXHIBIT "E."

Estimate "A"—58—1.

Estimate of cost to provide proposed interchange and delivery tracks between the Lawrenceville Branch R. R. and the S. A. L. Ry.'s Lawrenceville & Logansville Branch at Lawrenceville, Ga., per assistant engineer's drawing No. 19-1089, dated August 27th, 1912.

Proposed connecting track 1566 feet switch point to switch point.
Delivery track 1235 feet switch point to switch point.

Estimate.

Track, materials & handling	$3889.48
Labor, supervision & use of tools	5117.53
3 acres right of way at $600.00 per acre	1800.00
Total estimated cost to construct	$10807.01

Correct:

(Signed) H. R. ARTMAN,
Assistant Engineer.

Office of Assistant Engineer, Birmingham, Alabama, August 27th, 1912. E.

29

Estimate No. A58-1.

Estimate of cost to provide proposed interchange and delivery tracks between the Lawrenceville Branch R. R. and the S. A. L. Ry.'s Lawrenceville & Logansville Branch at Lawrenceville, Ga., per Asst. Engr.'s drawing No. 19-1089, dated August 27th, 1912.

Proposed connecting track 1566 feet switch point to switch point.
Delivery track 1235 feet switch point to switch point.

Estimate.

6232 lin. ft. 60# relay rail 55.6429 tons at $25.00.	$1,391.07
1578 new 1st class oak ties at 40 cts.	631.20
1 set #9 switch ties at $51.60	51.60
5 swts. #8 switch ties at 44.05	220.25
1 set #7 switch ties at 40.25	40.25
1 #7 set 60# stiff frog at 22.50	22.50
4 #8 60# stiff frogs at 23.95	95.80
1 #9 60# spring frog at 35.25	35.25
6 swts 15′ 60# split switches complete at 23.30	139.80
4 high switch stands at 12.50	50.00
2 low switch stands at 9.50	19.00
12 60# guard rails at 6.00	72.00
64 60# guard rail braces at 15 cts.	9.60
3000 60# tie plates (for curve) at .06-1/2 cts.	195.00
10 prs. 56# to 60# comp. joints at 3.50	35.00
4 derailers for 60# rail at 16.00	64.00
38 kegs track spikes at 3.20	121.60
222 prs. 60# angle bars (fit) at 40 cts.	88.80
5 kegs 60# track bolts at 4.00	20.00
10′-18″ T. C. pipe at 55 cts.	5.50
50′ 24″ Corr. Ingot iron pipe at 1.10	55.00
450 cu. yds. ballast at 1.00	450.00
	$3813.22
2% handling	76.26
	$3889.48

Labor.

10,500 cu. yds. excavation at 30 cts....	$3150.00	
614 ft. cotton mill spur removed & relaid at 20¢	122.80	
1235 ft. main line L. & L. Br. removed & relaid at 20¢	247.00	
3116 ft. new track laid and surfaced at 12 1/2 cts.	389.50	
10 ft. extension 18" T. C. pipe under L. & L. Branch at 30 cts.....	3.00	
Laying 50 ft. Corr. Ingot iron pipe at 30 cts.	15.00	
8 turnouts placed and surfaced at 25.00.	200.00	
Moving & repairing coal wharf at 25.00.	25.00	
Engineering	500.00	
	$4652.30	
10% supervision & use of tools.....	465.23	$5,117.53

Right of Way.

3 acres at $600.00 per acre.....	$1800.00	$1,800.00
		$10,807.01

Note:—If cotton mill gives right of way as shown from them reduce this estimate 1-3/4 acres at $600.00 per acre $1050.00.

Correct:

(Signed) H. R. ARTMAN,
Assistant Engineer.

Office of assistant engineer, Birmingham, Alabama, August 27, 1912 B.

30 DEFENDANTS' ANSWER.

In the District Court of the United States for the Northern District of Georgia, Northern Division.

Seaboard Air Line Railway
vs.
Railroad Commission of Georgia, Charles Murphy Candler, George Hillyer, Joseph F. Gray, Paul B. Trammel, James A. Perry, Campbell Wallace and James K. Hines.

The joint and several answer of the Railroad Commission of Georgia, Chas. Murphy Candler, George Hillyer, Joseph F. Gray, Paul B. Trammel, James A. Perry, Campbell Wallace and James K. Hines.

These defendants reserving all manner of exceptions that may be had to the uncertainties and imperfections of the bill, come and answer thereto, or to so much thereof as they are advised is material to be answered, and say:

1. These defendants admit the allegations of paragraph 1 of said bill, except the allegations that the Railroad Commission of Georgia is a corporation under the laws of the State of Georgia, and that Paul B. Trammel is a resident of the County of Hall, which allegations these defendants deny.

These defendants admit that the domicile of the Railroad Commission of Georgia is at the State Capitol in the City of Atlanta, and said County of Fulton; and they state, that said Paul B. Trammel is a resident of the County of Whitfield, and State of Georgia.

2. These defendants admit the allegations of paragraphs 2 and 3 of said bill.

3. These defendants deny the allegations of paragraph 4 of said bill except as herein qualified and explained.

They admit that prior to the entry of the order of September 11, 1912, complainant contended before the Railroad Commission of Georgia that it should not issue any order requiring a physical connection of the railways named; and that on said contention evidence was introduced both for and
31 against said order.

These defendants show, that the evidence, set out in Exhibit "A" to the bill in this case, is correct as far as it goes, but said exhibit does not embrace all the evidence on which the Commission acted in passing said order.

4. In answer to paragraph 5 of said bill, these defendants can neither affirm nor deny that complainant misunderstood said order of the Commission; but they admit that the Railroad Commission of Georgia received the letter, a copy of which is set out in Exhibit "B" to this bill.

5. In answer to paragraph 6 of said bill these defendants say, that on or about Oct. 22, 1912, the defendant, Chas. Murphy Candler, as chairman of the Railroad Commission, wrote the letter, a copy of which is set out in Exhibit "C" to this bill; but they deny that he was authorized so to do by his joint defendants in said bill.

6. These defendants deny the allegations of paragraph 7 of said bill except as herein qualified.

These defendants admit, that complainant has declined to comply with said order.

These defendants admit that complianant submitted to the Railroad Commission of Georgia, on the hearing of the application for this connection, the estimate prepared by its engineering department, showing that it would cost $10,807.01 to make a physical connection between its railway and that of the Lawrenceville Branch Railroad Company.

On information and belief, these defendants say that said examination was made by complainant's engineering department with the view of determining the impracticability of a connection between its railway and that of the Lawrenceville Branch Railroad Company.

These defendants deny that it will cost any such sum of money to make a practical connection between the railway of complainant and that of the Lawrenceville Branch Railroad Company; but on the contrary, they allege that a practical connection between said line of railways can be made for the sum of $1820.94, or less.

These defendants submit that the estimate set out
32 in Exhibit "E" to complainant's bill is a substantial copy of the estimate presented by complainant to the

Railroad Commission of Georgia on the hearing of said application for said physical connection between said railways.

7. These defendants admit the allegations of paragraph 8 of complainant's bill except as herein qualified. Complainant's railway does cross that of the Lawrenceville Branch Railroad Company, but not at a grade. Both of said railways enter the City of Lawrenceville, which is an incorporated city of the State of Georgia.

8. These defendants admit the allegations of paragraph 9 of complainant's bill.

These defendants aver, however, that complainant is likewise engaged in the intrastate transportation of freight and passengers within the limits of this State.

9. These defendants deny the legal averments of paragraph 10 of complainant's bill, except as herein qualified. They admit that under the law that the powers of the Railroad Commission of Georgia are limited to such regulations as do not violate the Constitution of the United States or laws made in pursuance thereof.

10. These defendants deny the allegations of paragraph 11 of complainant's bill, except as herein qualified.

These defendants admit that at present there is no interchange of traffic between complainant's railway and said Lawrenceville Branch Railroad Company; but they show that this is due entirely to the lack of a physical connection between said railways.

These defendants allege that if there were a physical connection between said railroads, there would be a considerable interchange of business between said roads. There is now a public demand and necessity for such physical connection, in order that freight originating at points of origin on the railway of complainant, and intended for points of destination on the line of railway of said Lawrenceville Branch Railroad Company, and for points beyond on the Southern Railway Company, might be exchanged at Lawrenceville, and thence transported to said points of destination. There is likewise a public demand and necessity for said physical connection in order that freight originating on the

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line of said Lawrenceville Branch Railroad, and coming to said Lawrenceville Branch Railroad from points beyond, and intended for points of destination on complainant's line, might be exchanged from said railway of the Lawrenceville Branch Railroad to complainant's railway at Lawrenceville, Ga., and be thence transported to said points of destination.

These defendants submit that the volume of business which would be so interchanged between said railways would be of considerable volume, if said physical connection is made. There would be a like interchange of business between said railroads and from and to points of origin and to destination on the respective lines of railway of these companies.

11. These defendants deny the allegations of paragraph 12 of complainant's bill, except as herein qualified. They admit that one of the objects and effects of said physical connection would be to permit interstate freight shipped from other States into Georgia to be switched from the terminus of one or the other of said roads at Lawrenceville to industrial plants in said town. Another object and effect of said physical connection would be to permit freight originating at points on the railway of the Lawrenceville Branch Railroad Company and on the lines of its connecting carriers to be delivered to the complainant for points of destination on its lines of railway. This would likewise be true of freight originating at points of origin on complainant's line, and destined for points of destination on the line of railway of the Lawrenceville Branch Railroad and the lines of its connecting carriers. In the opinion of these defendants, as much, if not more, intrastate freight would move over said physical connection than interstate freight.

12. These defendants deny the allegations of paragraph 13 of complainant's bill, except as herein qualified.

In the absence of an actual test of said order, these defendants are unable to say whether said physical connection would lessen or increase the revenue of complainant. In the opinion of these defendants this connection would have very little affect upon the revenue of complainant, while it would greatly benefit shippers and patrons of complainant.

As these defendants have before stated, it would
34 not take the sum mentioned in this paragraph to

build said connection; buts aid connection can be built for the amount hereinbefore stated by these defendants.

13. These defendants deny the allegations of paragraphs 14 and 15 of complainant's bill.

14. These defendants deny the allegations of paragraphs 16 and 17 of complainant's bill.

These defendants say that said order is not uncertain as to whom shall pay for the construction of said physical connection. Said order amounts to a judgment and direction that the costs of said connection shall be borne equally by complainant and the Lawrenceville Branch Railroad Company. If, however, there is any uncertainty about this matter, the same can and will be made certain by an order directing that the costs of said construction be paid by said companies.

15. These defendants deny the allegations of paragraph 18 of complainant's bill of complaint. It is true that said order does not designate the particular route by which said physical connection shall be made, but leaves this matter to be settled by said companies, if the same can be so done. These defendants submit that this fact does not render said order void. If said companies cannot agree upon the particular route for said physical connection, then the Railroad Commission will undertake to designate the route.

It may be true that complainant has been unable to agree with the Lawrenceville Branch Railroad Company as to what is the most practicable route over which to make said physical connection; but these defendants submit that this is due to the fact that complainant is unwilling to make any connection.

16. These defendants deny the allegations of fact set out in paragraph 19 of complainant's bill, except as herein qualified. From lack of information, these defendants can neither admit nor deny the allegations that it is impossible for complainant to purchase at any reasonable sum the right of way necessary for making said physical connection.

On information and belief, these defendants deny
35 that it will reasonably require three acres of right of way to make said physical connection. On the contrary, these defendants believe and allege that said connection

can be made with very little additional right of way. Whatever right of way may be necessary for this purpose can be had by condemnation proceedings under the law of this State; and these defendants admit that, as a matter of law, such right of way can be obtained by complainant and the Lawrenceville Branch Railroad Company by condemnation proceedings.

But these defendants submit that if said right of way cannot be obtained either by purchase or by condemnation proceedings, this fact does not render said order null and void; but furnishes an excuse why complainant cannot comply with it.

17. These defendants deny the allegations of paragraph 20 of said complainant's bill.

18. As paragraph 21 of complainant's bill contains only averments of law, these defendants do not think that the same requires any answer at their hands; yet they submit that the Railroad Commission of Georgia has power and authority to require said physical connection for intrastate business, if not for interstate business.

19. These defendants deny the allegations of paragraph 22 of complainant's bill.

20. These defendants admit the allegations of paragraphs 23 and 24 of complainant's bill, except as herein qualified.

These defendants admit that the Railroad Commission of Georgia would recommend to the Governor of the State of Georgia that suit be brought against complainant, if it violated this order, under Section 2667 of the Civil Code of Georgia; but these defendants assert that the fears of complainant that prosecutions would be begun by defendants under said order are entirely groundless.

It has never been the policy of the Railroad Commission of Georgia nor any of these defendants to begin a multiplicity of suits, prosecutions and criminal proceedings against companies subject to the jurisdiction of the Railroad Commission of Georgia and their agents for violations of the or-
36 ders of the Railroad Commission of Georgia. In case of such violations, the unbroken course of the Commission has been to call the attention of the Governor to such violations, and let him, in his discretion, direct suits to be

brought for penalties for such violations. In no case has but one suit been brought for any such violations of the orders of the Commission. In other words, it has been the uniform practice and custom of the Commission to have the validity of its orders judicially determined by a penalty suit alone.

21. These defendants deny the allegations of paragraph 25 of complainant's bill.

22. These defendants admit the allegations of paragraph 26 of complainant's bill, except as herein qualified. From lack of information these defendants do not admit, but on information and belief deny that the matter and controversy exceeds, exclusive of interest and costs, the sum or value of $3,000.00.

23. These defendants admit the allegations of paragraph 27 of complainant's bill.

24. For further answer to complainant's bill, these defendants say that there is a public demand and necessity for said physical connection between said railways. The lines of complainant's railway traverse DeKalb, Gwinnett and Walton Counties in this State, which said counties are large producers of cotton, cottonseed and other agricultural products.

These large agricultural products, so produced in these counties, would move in large volume over complainant's line to Lawrenceville, and thence over the line of the Lawrenceville Branch Railroad Company to the Southern Railway Company, and thence to points of destination on the lines of the latter company. So these agricultural products would move in large volume over the lines of the Southern Railway to Suwanee, and thence over the line of the Lawrenceville Branch Railroad Company to Lawrenceville, and thence over complainant's line, if this physical connection were made.

At various points on the lines of complainant are manufacturing concerns which use cotton, coal, cotton-seed, tan bark and other products in large quantities, and which ship out cotton goods, leather, cotton-seed oil, cotton-seed meal, and fertilizers in large quantities. These goods cannot now be shipped to points on the lines of the Lawrenceville Branch Railroad Company and to points on the

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Southern Railway, with which the former company connects, for lack of this physical connection, unless these goods should be shipped in roundabout ways and at such charges as absolutely prohibit their movement. For instance coal mined on the lines of the Southern Railway Company cannot be carried to Lawrenceville for lack of this connection for the reason that it would be moved through Suwanee to Atlanta and thence over complainant's line to Lawrenceville, and to other points of destination on complainants line, or such coal would have to be switched off at Gainesville, Georgia, carried over the Gainesville Midland Railway to Winder, and thence over the complainant's line to Lawrenceville, and to other points of destination.

Cotton and cotton-seed produced on complainant's lines, in the counties aforesaid, cannot be carried to factories on the lines of the Southern Railway Company because of the lack of this physical connection. These products would have to be carried via Atlanta, or via Winder or via Athens, and thence from these points to the Southern Railway, which would require these products to move in circuituous routes and at prohibited rates.

For these and many other reasons these defendants allege that there is a public demand and necessity for said physical connection.

Wherefore, these defendants, having fully answered complainant's bill, pray to be hence dismissed with their reasonable costs in this behalf expended.

JAMES K. HINES,
Solicitor for Defendant.

38 United States of America,
State of Georgia,
County of Fulton.

Before the undersigned in person came Campbell Wallace, who on oath deposes and says that he is one of the defendants in the above stated cause; and that the facts stated in the foregoing answer, when stated on the knowledge of the defendant are true, and that when stated on information and belief, he believes them to be true.

CAMPBELL WALLACE.

Sworn to and subscribed before me, this 29th day of March, 1913.

W. H. HARRISON,
Notary Public Fulton County, Ga.

Filed in open court April 2nd, 1913, 12:25 P. M.
O. C. FULLER, Clerk.
By J. D. STEWARD, Dep. Ck.

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39 OPINION OF THE COURT.

In The District Court of The United States For
The Northern District of Georgia.

The Seaboard Air Line Railway.
vs. No. In Equity
Railroad Commision of Georgia, et al.

The Railroad Commission of Georgia, on the 12th day of July, 1912, passed an order requiring the Seaboard Air Line Railway and the Lawrenceville Branch Railroad, within four months, to make and maintain a physical connection at Lawrenceville, Georgia. The Commission did not fix the specific place for the connection, nor did it prescribe who should pay therefor, but it expressed the opinion that the expenses of construction and maintenance should be borne equally by the two railroads.

This suit is brought to enjoin the enforcement of this order. It is conceded by counsel that this is not a case coming within Section 266 of the New Judicial Code, amended by the act of March 12th, 1913, requiring three judges, and no attack whatever is made upon the constitutionality of the Act of the Legislature of Georgia authorizing the Railroad Commision of Georgia to require physical connection between railroads (Code of Ga. of 1910, Sec., 2664). This Code section is taken from the Act of August 22nd. 1907. (Ga. Laws 1907, p. 94).

The right of State Railroad Commissions to require such physical connection has been fully sustained by the Supreme Court of the United States in Wisconsin etc. R. Co., vs. Jacobson, 179 U. S. 287 (p. 301) and in State of Washington ex rel.

Oregon R. and Nav. Co. vs. Fairchild, 224 U. S. 510. In the latter case the right of the railroad to appeal to the courts is also fully recognized and sustained, this right having been also recognized in the Jacobson case.

Considerable evidence has been offered on the hearing here as to the necessity for this connection, particularly as to the necessity for it with reference to the transportation of freight and more especially with reference to the transportation of freight in car load lots. This evidence does not show that the Seaboard Air Line Railway would be benefitted by this connection; indeed it may be admitted that it comes very near showing the contrary, as to immediate results at least. The fact, however, that the Seaboard Air Line Railway would suffer some small loss by reason of this connection at first is no reason why the order is not valid. (Atlantic Coast Line R. R. vs. North Carolina Corporation Commission, 206 U. S. 1).

Admitting that the Commission can make orders that are fair and reasonable in character, it should appear satisfactorily here, in this de novo investigation and application for an injunction, that the order of the Commision is not reasonable in character under all the circumstances shown in the matter.

The Seaboard Air Line Railway contends here that to enforce the order of the Commission would require quite a large expenditure, something like ten thousand dollars, while the Commission has put in evidence a plan by which it is claimed the connection can be made for something like eighteen hundred dollars, under two thousand dollars anyhow. I am satisfied from statements of counsel made in the case that the Commission is perfectly satisfied with this connection last named. Counsel for the Commission has stated in open court that the Commission would not ask this connection to be made if it required the expenditure of any where near ten thousand dollars, but claims that the work can be done and the connection made for a much smaller amount. I have no doubt, from what appears here, that if the Seaboard Air Line Railway will appear before the Railroad Commission a proper arrangement will be made for making the connection at a very reasonable expense.

It is unnecessary to go extensively into the evidence adduced here. I do not think that the complainant has shown, even as to the matter of carriage of freight, that the order of the

Commission is so unreasonable as to justify interference by this Court.

It seems that until recently the road from Lawrenceville, on the Seaboard Air Line Railway, to Suwanee on the Southern Railway, was a narrow gauge road, but that it has
41 now been widened to the standard gauge of both the Southern and Seaboard main lines. This being true, it seems to me that, upon the face of the whole matter, there should be some physical connection between these two roads. The public interests may at any time be such as to require the taking of trains over this line, which necessity may arise from various causes which may well be anticipated.

Counsel for the Railroad contend that this court would have no right to consider any other grounds for sustaining this order of the Commission than those upon which the Commission acted. Of course it is a de novo investigation and this matter appears upon the very face of the proceeding. This Lawrenceville Branch Railroad, from Sewanee on the Southern to Lawrenceville on the Seaboard, being now of standard gauge enters the City of Lawrenceville and, although the two roads enter the same town, there is now no physical connection whatever between them. As the connection can be made at comparatively little expense, it seems to me that the Railroad Commission was fully justified in making the order that it did. At all events it cannot be called an unreasonable order under all the facts connected with the matter.

The application for an injunction is denied.

This 15th day of May, 1913.

WM. T: NEWMAN.
U. S. Judge.

Filed in the Clerk's office 15th day of May, 1913.
O. C. FULLER, CLERK,
By J. D. STEWARD, Deputy.

42 FINAL DECREE.

In the District Court of the United States for the Northern District of Georgia, and Northern Division of Georgia.

Seaboard Air Line Railway.

vs. In Equity.

Railroad Commission of Georgia, Chas. Murphy Candler, George Hillyer, Joseph F. Gray, Paul B. Trammel, James A. Perry, Campbell Wallace and James K. Hines.

This cause came on for final hearing and was argued by counsel, and the court, upon due consideration of the pleadings and the evidence, and the arguments of counsel, doth now

Order, adjudge and decree that the injunction and relief prayed by the complainant be denied and that this suit be, and the same is, hereby dismissed at the costs of complainant. This June 7th., 1913.

WM. T. NEWMAN, Judge.

Filed in Clerk's office 7th day of June, 1913.

O. C. FULLER, Clerk,

By J. D. STEWARD, Deputy.

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43 PETITION FOR APPEAL.

In the United States District Court for the Northern Division of the Northern District of Georgia, Holding Sessions at Atlanta.

Seaboard Air Line Railway

versus In Equity.

Railroad Commission of Georgia, Charles Murphey Candler, George Hillyer, Joseph F. Gray, Paul B. Trammel, James A. Perry, Campbell Wallace and James K. Hines.

To the Honorable Wm. T. Newman, Judge of said Court:

Your petitioner, Seaboard Air Line Railway. complainant in the original bill, considering itself aggreived by the decree of the court entered on the 7th day of June, 1913, denying it

the relief prayed for, hereby petitions said Court for an order allowing it to prosecute an appeal from said decree to the Circuit Court of Appeals for the Fifth Circuit, for the reasons specified in the assignment of errors simultaneously filed herewith under and according to the laws of the United States in this behalf made and provided; and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Fifth Circuit; and your petitioner will ever pray.

July 19, 1913.

SEABOARD AIR LINE RAILWAY,
By W. G. LOVING and EDGAR WATKINS,
Its Solicitors.

WATKINS and LATIMER,
Of Counsel.
1509, 4th. Natl. Bk. Bldg. Atlanta, Ga.

Filed in Clerk's Office 19 day of July, 1913.
O. C. FULLER, Clerk,
By J. D. STEWARD, Deputy.

44 BRIEF OF EVIDENCE AND STIPULATION OF COUNSEL THEREON.

In the United States District Court for the Northern Division of the Northern District of Georgia, Holding Sessions at Atlanta.

Seaboard Air Line Railway
versus
Railroad Commission of Georgia, Charles Murphy Candler, George Hillyer, Joseph F. Gray, Paul B. Trammel, James A. Perry, Campbell Wallace, and James K. Hines.

Condensed Form of the Evidence to be Included in the Record.

H. R. ARTMAN, a witness called on behalf of the complainant, having been first duly sworn, testifies as follows:

Direct Examination.

By Mr. Watkins:

I am a Civil Engineer; Assistant Engineer for the S. A. L. Ry. for ten years. In my capacity as Assistant Engineer for the Seaboard Air Line, I was called upon to investigate the possibility of a physical connection between the Lawrenceville Branch and the Seaboard at Lawrenceville, Ga. I have investigated as to the practicability of making the connection such as indicated on a plat furnished by the Lawrenceville Branch Railroad, and which was before the Railroad Commission of Georgia. That suggestion shows a maximum of three and one half per cent grade and seventeen degrees
45 curve. From my experience I am able to determine what is a practicable railroad track as to its grade and curve, and I do not consider this a connection—a safe connection to be made on account of the grade and curvature necessary to reach the desired points and overcome the elevations. The cars are apt to run away. The speed of the train would govern the danger of that degree of curve in so far as the climbing of the rail is concerned, or running over it, and it could be operated on that degree of curve at a slow speed, you could get the cars around all right. It is possible to operate that grade, but not practicable. The danger of operating with such a grade as that is from run-away cars

and damage to equipment and life. The Lawrenceville Branch is over the Seaboard at the crossing, I should say twenty five feet from the top of the rail of the Seaboard to the top of the rail of the Lawrenceville Branch. The depots of the Lawrenceville Branch and the Seaboard Air Line at Lawrenceville are apart, something like four hundred feet; the Lawrenceville Branch depot is considerably above the Seaboard depot. I made for this connection a plat or survey after the hearing before the Railroad Commission of Georgia. The length of the connection, actual track connecting the two tracks, on the plan which I made is 1,566 feet, and on this plan of the Southern, or Lawrenceville Branch, Railroad's shows 945 feet. The curve and grade on the plan shown on the plat I made is 8.30 curve and a maximum of two per cent grade, and the other is 17 curve and three and one half per cent grade. I made an estimate on the cost of putting in the Lawrenceville Branch proposed connection; in my opinion, it would cost to put it in $10,807.01. I figured three acres of right of way in there at the price of $1,800.00. I do not know whether the right of way for that proposed connection can be procured, that is just approximate. My proposed connection there connecting with the Lawrenceville Branch and the Loganville Branch of the Seaboard, not the main line. The connec-

46 tion proposed by the Lawrenceville Branch is with the Seaboard Air Line main line. The Seaboard Air Line main line runs down towards Atlanta, and the Lawrenceville Branch terminates about 400 feet therefrom and runs in the direction of Suwanee in connection with the Southern Railway. The Logansville Branch of the Seaboard connects with the main line of the Seaboard and runs in the direction of and to Logansville. The proposed connection that I made the survey for began on the Lawrenceville Branch and connected with the Logansville Branch. The Lawrenceville Branch is overhead and the Seaboard goes under. The Lawrenceville Branch comes in and crosses over the Seaboard and runs right down to the terminus. They wanted to start the same place I do, practically the same place. Their connection comes around and connects with our spur to the cotton mill. My plan increases the distance and decreases the grade in overcoming the elevation between the tracks of the two roads. The curve is not so short, mine is an eight thirty curve and theirs is a seventeen degree curve. The land in there is occupied by

houses right up near the crossing on the two main line roads; there is one house that the porch will come within the right of way; that is the only house it will strike. After the hearing before the Railroad Commision, Mr. Durham and Mr. Stringfellow—Mr. Durham is the assistant engineer of the Southern Railway and Mr. Stringfellow is under Mr. Durham—furnished a plat showing a third method of connecting. I changed this method so it starts from the spur track of the Lawrenceville Railroad and runs thence down paralleling the Seaboard main line. The connection from the Seaboard main line into the track runs out towards the end of the spur track so they can see the cars at the end of the spur track. The difference between the method shown on my plan and the method furnished by Mr. Durham and Mr. Stringfellow, the one I received, had this connection coming directly into
47 the Seaboard main line. If this connection came directly into the Seaboard main line, there would be no trouble seesawing, the engine would get the car and place it on this track, it would have to come in this way and go on back and get the car and pull it out and then push it back on the main line again and go on out to where they were going to put it. They would have to leave the main line with the switch engine and go up to the connecting track, then go back the connecting track to the storage track and pull it up the connecting track and then into the Seaboard track, making four movements to put a car in to the storage track. My suggestion was to take the switch of the connecting track out of the main line and put it into the storage track and then connect the storage track with the main line of the Seaboard, which would obviate that switch back movement. It would obviate two movements in putting the car on the storage track. The other advantage is, I think, the degree of hazard of cars getting loose on the connection out here and the running out on the main line is lessened. The grade of that spur track of the Lawrenceville Branch with which this proposed connection would be connected is about four per cent, I think is the maximum. The grade of the proposed connection is 1.8 per cent. The storage and the connecting track together is about nine hundred feet; the connecting track proper 556 feet. Of that nine hundred feet of connecting track and the storage track there is on the right of way of the Seaboard Air Line Railway about seven hundred feet. The other one hundred or one hundred and

twenty feet, whichever it may be, is a portion of street and a portion of it is private property I understand. Thirty or forty feet, possibly fifty feet, is private property, the balance is public property of the town of Lawrenceville. It is a street. I do not know whether the City is willing for the street to be used; I have made no inquiry. That private property that I have mentioned to be crossed has a building on it—a blacksmith shop. I consider this more hazardous than the one I proposed, the second plan, as it connects with the main line tracks, whereas the other one connects with the Logansville Branch,
48 and the traffic on the main line track is more than it is on the Logansville Branch track, which increases the hazard in proportion. Eliminating the cost of right of way, the cost of last connection would be about eighteen hundred dollars.

Cross-Examination.

By Judge Hines:

The first plan can be operated, but I think the hazard is too much to assume; it would make derailment more easy; it would not necessarily make derailments occur if the operation of the cars and the locomotive was slow. If made slowly I think there would be still a hazard on account of the degree of the curve and the grade. There is always a hazard, but there would be increased hazard on this particular track; the steeper the grade, the more hazard on any road, that is true. It would not be practical and safe when the weather was wet and the track was slick. They could be operated. I never observed one with the curve as sharp or the grade as steep as the first plan, not that I recall. This physical connection cannot be made over the right of way of the Seaboard Air Line Railway entirely, according to the third plan; I think the connection would occupy the right of way beyond the limits of the Seaboard right of way, about one hundred or one hundred and twenty feet. The cost of the connection by the third plan—cost of track and labor putting it in, can be done for about eighteen hundred dollars. That, however, provides for no right of way. The difference between this third plan, costing eighteen hundred dollars, and my estimate of my plan, which would cost over ten thousand dollars, so far as safety is concerned, is an increased hazard on account of that switch connection with the main line. The mere fact of the track being adjacent to the

main line, connecting at that point. Connecting on the main line, in other words, instead of on the Logansville Branch. Any connection with the main line has a certain amount of hazard, of course. This connection with the main line would increase the degree of hazard over an ordinary switching connection with the main line because of the
49 grade of the connecting track; that varies from 1.8 to 4 per cent. The four per cent grade is on the present spur track, the track that is already there. I did not undertake to confer with the engineers of the Lawrenceville Branch Railroad about putting in a practical connection. I have charge of this for my road, the engineering part of it. I received the plan for the third connection from the Seaboard officials; I don't know where it came from to them. I made the second plan to cover what I understood were the facilities desired to take care of the business, the cost and the plan I considered a reasonable and possible connection. I have heard that the Seaboard did not care about the connection being made. Now you will understand that the cost of that track, as proposed by me, is not for the track alone. That connection requires the shifting of the main line of the Logansville Branch, and additional right of way on that Logansville Branch, which runs up the cost there considerably. I did not provide for moving of houses—no houses to be moved, except there is a porch to one house that comes within what I have shown as the right of way of our line, that is C. M. Renwick's house on top of the hill.

Re-direct Examination.

By Mr. Watkins:

Taking the three plans that have been submitted, considering the safety, the practicability and all of the situation, the safest and most practicable is the one costing over $10,000 and proposed by me. That plan would come down the Lawrenceville spur track and connect with our main line, there would be 556 feet of it between the end of the present Lawrenceville spur track and where I start back on this storage track; then there would be four or five hundred feet of that storage track from there. It would be a little less on the storage part, that could be raised up and made level if necessary. It is an un-
50 desirable connection to have. It is an undesirable proposition to have a connection with the

main line if it can be avoided. The grade of the Seaboard main line at that point where the third plan connects with it is 1.2 per cent. The hazard of this connection here is the grade of this track from along in back of the spur. To overcome the elevation between that point on the main line of this track, requires a very stiff grade. Now if a car got started at the spur it would run right straight on down and might come on up in the main line. With the connection first proposed by the Southern Railway it would connect right into the main line, and a car getting loose would run on our main line for several miles. If a car got loose, even with the switch changed as I proposed, it would go into the storage track; that is right, it would go into the storage track and after it got into the storage track it would probably foul our main line. The grade from a point at the Farmer's Union Warehouse, the end of the spur, up to the main line of the Lawrenceville Branch was about four per cent., it is a maximum of four per cent. Where the proposed new connection connects at the corner of the Farmers Union Warehouse it runs down across a place marked shop, thence down the road, the wagon road, then it runs down between that wagon road and the main line of the Seaboard, the storage track being fourteen feet from the Seaboard track as it now exists, center to center of the storage track and the main line. And the center of the storage track is thirty-six feet from the outside limits of the right of way of the Seaboard Air Line. The wagon road of which I speak is between the storage track and the outside limits of the right of way. In speaking of a car that might loose up here on the present spur track of the Lawrenceville Branch and run down to the storage track, it might interfere with the main line track of the Seaboard Air Line; it might foul the main line
51 track and might destroy our water tank here if it turned over or derailed beyond that. The Seaboard Air Line main track at that point is about 1.2 per cent for some distance towards Atlanta, approximately a mile or so I should say.

Re-cross Examination.

By Judge Hines:

A storage track can be built so that a car will not run off of it if left standing on the storage track, by building it long enough to overcome the speed. Of course an abutment could

be put up there that would stop the car, but not without demolishing the car, you might say. You could extend the storage track and raise it all the time, that would require going away from the Seaboard main line, however, and would occupy considerable space. In my opinion as an engineer, that third plan is undisputed by me as a practical one; it can be made, so far as the connection is concerned, but I do not consider this portion of the track desirable at all.

F. TAYLOR, a witness called on behalf of the complainant, having been first duly sworn, testified as follows:

Direct Examination.

By Judge Loving:

I live at Lawrenceville, Georgia. I am freight and ticket agent of the Seaboard Air Line Railway, and have held that position four years at Lawrenceville. Previous to that, I was freight and ticket agent at Gloster, Ga., west of Lawrenceville five miles. Prior to that I was freight and ticket agent at Auburn, Ga. I was there about seven years, at Auburn. Lawrenceville is located on the Seaboard Air Line, on the main line from Birmingham, Ala., to Monroe, N. C. Interstate trains pass through there on that main line, trains for New York and other points North and East. Lawrenceville from Atlanta is thirty-five miles, and from Winder, seventeen miles. I am familiar with the business that moves over the Seaboard, the freight business from points east of Lawrenceville, between Atlanta and Lawrenceville. If this physical connection between the Lawrenceville Branch Railroad and the
52 Seaboard is established at Lawrenceville, there will be no freight in carload lots originating between Atlanta and Lawrenceville which will pass over that connection to points of destination on the Lawrenceville Branch. The chief carload business that moves over the line between Atlanta and Lawrenceville that originates at points between Atlanta and Lawrenceville is cotton and cotton seed. That freight moves, under the present arrangement, when it originates at one of these intermediate points, to Atlanta or Lawrenceville, and Winder and markets on each side of us. There is no stations between Lawrenceville and Suwanee. There is one

stop—Huff. There is no agent there at all; the distance from Lawrenceville is eleven miles, I believe—ten or eleven. Dacula and Auburn are the stations on the Seaboard west of Winder. There is no business that originates there, I mean carload business, that would come to Lawrenceville, thence over this physical connection to any point of destination on the Lawrenceville Branch; I know of no business that would go there. You see there is no station on the Lawrenceville Branch to Suwanee that has a side track. At those two stations beyond in the direction of Winder, no carload business originates but cotton and cotton seed, which goes to Lawrenceville, Winder and Athens, I suppose. That is the natural market for them, and Atlanta, of course. There is no business that would originate at Huff, I don't see how it could; nothing there to handle it with; nothing but cotton, if they handle that, and I don't see how they could, no, sir. The Lawrenceville Branch is run as an independent corporation; I don't know of any equipment it has, never saw any on the Lawrenceville Branch. The equipment used in operating it is always the Southern. At Lawrenceville, the Seaboard also has a branch line known as the Logansville Branch. There is no business that would originate on that road, on the Logansville Branch, carload business, that would move over this connection if it was made
53 at Lawrenceville, on the Lawrenceville Branch Railroad. There is no business that would originate on the Lawrenceville Branch Railroad that would find destination at points on the Logansville Branch, carload lots, nothing at all. I can't see any reason for advocating any connection—I can't understand it, the business does not demand it. I understand, the way it is advocated and the way it is being treated and brought up, we are expected to handle anything that is given us to plants, all our plants at Lawrenceville, from the Lawrenceville Branch, except of course less than carload lots. That is the way it was brought before the Railroad Commission; that the Seaboard would be compelled to handle all carload lots intended for plants on our tracks that they offer us by our connection; I mean switch carload lots coming by the Lawrenceville Branch to plants on the Seaboard and switch out the finished product. That would simply be a switching movement, that is all we would get out of it. The switching charge is two dollars a car, a loaded car; we do not get anything for switching an empty car. We have the Lawrenceville Fertilizer Com-

pany on the main line of the Seaboard, also the Atlanta Tannery & Manufacturing Company, the Allen Manufacturing Company, the Lawrenceville Manufacturing Company, and the Lawrenceville Oil Mills—there are five. We have side tracks to every one of these plants. We handle everything they want. The tannery here gets its raw material from New York; they are getting their leather from New York; they get their hides from New York—haven't received any from New York for some time though. That freight moves from Portsmouth, Va. over the Seaboard to Lawrenceville; the Seaboard gets the haul on it from Portsmouth to Lawrenceville, probably seven hundred miles. That is about all the carload lots
54 they receive, except their coal, which comes from Tennessee or Kentucky points. It comes to them over the Seaboard; they receive it at Atlanta, and the Seaboard gets the haul from Atlanta to Lawrenceville. The tannery ships to every point nearly. I couldn't name those—broken lots, less than carload lots. We get our part of it. Some of it goes to Southern Railway points, shipped direct over the Lawrenceville Branch. The fertilizer plant gets its raw material from Oklahoma and some from Savannah and East Point. That comes in carload lots. That which comes by way of Savannah comes over the M. D. & S. to Macon and the Central of Georgia or Southern to Atlanta. The M. D. & S. is a subsidiary line to the Seaboard. Some comes from Oklahoma, the Seaboard receiving it from there at Birmingham, Ala. The Seaboard gets the haul from Birmingham to Lawrenceville, something like two hundred miles, I believe. When the material comes from East Point, that moves over the Seaboard from Atlanta to Lawrenceville. The manufactured fertilizer moves from Lawrenceville to all points. The Seaboard handles its part of it, not all of it, some goes to points on the Southern Railway, I could not say to what points it goes. When it moves over the Seaboard to points on the Southern Railroad we would handle it to Atlanta for Southern points or to Elberton or Winder, or to Athens. There is a connection between the Southern Railroad and the Seaboard at Athens and Elberton. There is a road that runs from Lula on the Southern Railroad to Athens. The Southern has a connection at Elberton and that is where we handle our Southern points south between Dacula and Elberton. The cotton mill gets its cotton from the local markets on the Seaboard along there;

usually they buy the majority of it in the local market, and we receive cotton for them from our local points also, Dacula and Winder and others. The Seaboard earns the transportation haul in transporting all of that, and it places it at their industrial tracks for them. The cotton mill sends out yarn as their finished product. It moves to different points, to
55 some over the Southern. There is a considerable part of it not shipped in carload lots, so much per hundred. I haven't had to place a car for them in a long time. It is shipped to different points. When shipped to Philadelphia it goes to Richmond over the Seaboard. Then they ship to Oswego and New York, and that goes by Portsmouth and by steamship. The oil mill ships crude oil to Macon and Louisville, Ky., and different points where they purify the oil. We get the haul to Atlanta to both places. In the manufacture of all of these articles, considerable coal is used by the various plants. We receive all of the coal in Atlanta for these different plants, and the Seaboard gets the haul on it from Atlanta to Lawrenceville. If this physical connection is made and the purpose is carried out that I have just stated—to force the switching connection at the hands of the Seaboard—and the raw material comes in there over the Lawrenceville Branch, over the Southern to Suwanee and thence over the Lawrenceville Branch to Lawrenceville; if the raw material to these different plants comes that route, all the Seaboard would get out of it would be the switching charges. If the finished products from those mills would move over the same route, that is, first over the Lawrenceville Branch road to Sewanee and thence over the Southern, all the Seaboard would get out of it would be the switching charges. I estimate that would affect the revenue of the Seaboard, the net revenue, thirty or forty per cent—the net revenue of the Seaboard at the present time. If the physical connection is established, and if the freight coming in and going out is deflected by reason of this connection and moves over the Lawrenceville Branch, and thence over the Southern to markets north and east, instead of over the present movement, it will reduce the revenue of the Seaboard thirty or forty per cent., that is, the Lawrenceville business. The average monthly revenue from the Lawrenceville office will run about five thousand dollars, and this new
56 arrangement, if made, I estimate, would reduce the revenue there thirty or forty per cent. I know that

a similar estimate has been made by the representative of the Lawrenceville Railroad. I am familiar with the location as shown by the plan, spoken of here as the third plan, proposing a physical connection between the Seaboard and the Lawrenceville Branch. Of that new connection, there would be on the right of way of the Seaboard something like seven hundred feet I think; the rest of it is on private property and on the street. A gentleman by the name of Main owns the private property, on which is a store and blacksmith shop. I understand the Southern Railway have an option on it at fifteen hundred dollars. A fair valuation of the Seaboard's right of way that is taken in that connection, that seven hundred feet of it for the storage track, I would place that at about two thousand dollars. The property is of the same character of this piece of property that I have just spoken of right there next to it, only it is on the right of way next to the railroad proper.

Cross-Examination.

By Judge Hines:

Suwanee is about the same distance from Atlanta that Lawrenceville is on the Seaboard. From Lawrenceville to Suwanee it is eleven miles. The Logansville Branch of the Seaboard is ten miles long. Logansville is located in Walton County. This physical connection would reduce the revenue of the Seaboard Air Line at Lawrenceville thirty to forty per cent., that would be my estimate. We are handling all of the business now and that going in there would reduce us, practically all of it. These plant people claim they could handle their stuff that way if they had that connection, and I take for granted they would. They do not handle a good deal of their product over that way now. A large part of the output of the Lawrenceville Manufacturing Company does not move from Lawrenceville over the Lawrenceville Branch Railroad, we know some of it does.

57 They have to dray it. If this connection was made, it would be carried by cars from the Lawrenceville Manufacturing Company's plant, located on the Seaboard, to the Lawrenceville Branch, about a quarter of a mile, and that part of their product that moves over the Lawrenceville Branch would then move over this physical connection over the Seaboard Air Line and we would get our earned charges for that movement, the switching charges. If this

physical connection was made, freight moving from Atlanta would go the Southern and the Lawrenceville Branch, if routed that way; that would be eleven and one-half miles longer. It would be the same rate coming into Lawrenceville. I understand it would have the same rate. I have the shippers word for it; in their work for this connection, they say they would route via the Southern. The Allen Manufacturing Company's president, Mr. Martin, said that he very often had carloads he would ship over the Southern; those were merely shipments moving from Lawrenceville. Shippers in Atlanta shipping freight to Lawrenceville, if they ship it—if this connection was made and it was shipped via the Southern, over the Southern via Suwanee then over the Lawrenceville Branch to Lawrenceville, they would have to pay switching charges if delivered on our tracks. They would not pay a switching charge if they shipped from Atlanta direct over the Seaboard. Mr. Martin told me he got that fiber at points on the Southern Railway, and we handle it straight in, via Greenwood and Clinton, direct connections. He got it from Charleston, S. C. I don't know what he gets on the Southern. J. Ambrose & Company are located on the Lawrenceville Branch. They manufacture lumber, work lumber, have a planing mill. If J. A. Ambrose & Co. wanted to ship a carload of lumber from a point on the Lawrenceville Branch, they would have to move it to our tracks by drays. If it moved in carload lots, the car would have to go to Logansville over the Logansville Branch; it would have to go to Suwanee and around by Atlanta and back to us. If they wanted to ship a carload of lumber to Grays on the Logansville Branch, it would have to go to Suwanee and Atlanta and back to us. Now if it had been loaded on cars and moved by the Lawrenceville Branch to Suwanee
58 and around by Atlanta and up our line, that expense would permit the movement of these products in that way. If this physical connection was made, the J. A. Ambrose Company could ship their lumber over this physical connection to the Seaboard and the Seaboard would get the switching charges for that, and if it moved to points on their line they would get regular freight charges. When they ship to points on our line—when they ship stuff on our road, we get it; we do not get any carload lots, no, sir. When the Lawrenceville Manufacturing Company buy cotton at Suwanee, a carload of it, to move to get to Lawrenceville, it could come

up the Lawrenceville Branch to Lawrenceville; after it got to Lawrenceville, they would have to dray it. If this physical connection was made, it could be transferred and switched by our road, and we would get the switching charges. As it is now, we get nothing. If this physical connection was made, on the output of the cotton mill moving to points of destination on the Southern, we would handle the switching charges. Some of the fiber of the Allen Manufacturing Company comes over the Lawrenceville Branch; then they have to dray it to their factory. If this physical connection was made, the Seaboard Air Line would receive switching charges from them on that fiber. The Atlanta Tannery & Manufacturing Company are engaged in tanning and manufacturing leather. They are located on the Seaboard Air Line, probably a mile from the Lawrenceville Branch. They handle leather from New York, hides, and some kind of acid for working their material. I believe there is one point of the Southern that they receive some kind of material from, I don't know what it is, material of some kind that they use. That material now moves from that point on the Southern to their plant by drayage. If this physical connection was made, it would be switched by the Seaboard and the Seaboard would get a charge for switching. They move as low as five thousand pounds in a car. If the Atlanta Tannery & Manufacturing Company wanted to ship five thousand pounds of their product to Suwanee,
59 they would have to dray it over to the Lawrenceville Branch. If this physical connection was made, the Seaboard would be paid for that if it should switch it. I don't know anything about the switching rules at present; I am not familiar with them. The Lawrenceville Oil Mill makes crude oil, cotton seed meal and hulls. If the Lawrenceville Oil Mill bought a carload of seed at Suwanee, that carload of seed would have to move to reach their plant by dray, or go to Atlanta to get it to their plant by rail. That would prohibit their buying cotton seed at Suwanee and having it shipped to their plant. Carload lots originating on the Southern Railway and passing through Atlanta and thence to Lawrenceville, if it moves over our road, there would be a loss in time; we can move it quicker than the Southern. A carload from Selma, Ala., moving over the Southern to Atlanta, is switched from the Southern to the Seaboard in Atlanta and moves thence to Lawrenceville. The revenue of the Seaboard Air Line amounts, in my opinion, to

about five thousand dollars a month; that includes the passenger revenue, which is about eight hundred to a thousand dollars. The passenger fare to Atlanta is the same over both lines. The Seaboard has practically all the passenger traffic from Lawrenceville to Atlanta. This five thousand dollars embraces the package freight. The charges on package freight is the same to Atlanta over the Southern and the Lawrenceville Branch as over the Seaboard. The Seaboard now carries practically all the package freight. The building of this physical connection would not in any way give the Lawrenceville Branch any more of the package freight; it would not have any more facilities for handling it than it has now. It handles very little of that package freight. The Lawrenceville Fertilizer Company manufactures guano, and ships out over the Lawrenceville Branch Railroad now. It is brought to their warehouse. Their mill is on the Seaboard main line, probably a mile from the Lawrenceville Branch Railroad, and if they ship a carload of their fertilizer to Suwanee Junction or points on the Lawrenceville Branch Railroad and Southern, they switch the car up to their warehouse and transfer it through there. They have a track on the opposite side. The width of that warehouse is probably seventy-five feet. If they wanted to ship anything to Flowery Branch on the Southern main line, it would have to go through the same process, and for Norcross, in the same county, it would have to go through the same process, and for Duluth the same thing, and Buford. Assuming that cotton seed meal is manufactured at Buford, Flowery Branch and Gainesville, the Lawrenceville Fertilizer Company would get this material from Gainesville and those other points in carload lots by way of Atlanta and then go back over the Seaboard Air Line.

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Re-direct Examination.

By Judge Loving:

This fertilizer plant is on the main line of the Seaboard; the Seaboard has an industrial track running up to the warehouse, and the Lawrenceville Branch has an industrial track running up there; one is on one side and the other on the other. That is the only industrial track that the Lawrenceville Branch has there, and they get business by having that industrial track located where it is. In regard to the shipments coming to those

plants from Selma, Ala., and other points—those are interstate shipments. They come now to Atlanta and are transferred to the Seaboard and then go direct to Lawrenceville and to the plant. There is a switching from the Southern to the Seaboard here in Atlanta. If it came right on over the Southern to Suwanee and thence to Lawrenceville over the Lawrenceville Branch, the shipment would have to be switched to the Lawrenceville Branch at Suwanee, and would then have to be switched to the Seaboard at Lawrenceville; then there would be two switchings. As a matter of fact the delay incident to shipping would be to ship by that route instead of as at present. We have facilities on the main line and on the branch; we have team tracks on the Logansville Branch and also have team tracks over in town. From this Ambrose plant or mill, shipments over the Logansville Branch—the most convenient point for it to be loaded is on our tracks.
61 They have a warehouse on our tracks. If there were other shipments, carload shipments, that they would have at their plant—their plant is on the Lawrenceville Branch—and if they loaded at the plant on the Lawrenceville Branch destined to places on the Logansville Branch or on the main line of the Seaboard Air Line, that car would have to be switched by the Lawrenceville Branch before it came to the Seaboard, and if the Lawrenceville Branch declined to do that switching it would be no convenience at all.

R. M. LANGSTON, a witness called on behalf of the complainant, having been first duly sworn, testified as follows:

Direct Examination.

By Judge Loving:

I travel for the traffic department of the Seaboard and am familiar with the Seaboard and the Loganville Branch in and around Lawrenceville. I travel that section of the State for the purpose of soliciting business, looking out for business for the road. I am also familiar with the Lawrenceville Branch Railroad. As to the Southern Railway, the line running out by Greenville north, I have only been over it a couple of times. I am not very familiar with it. With my familiarity with these roads and the business on them, if this physical connection is

established between the Seaboard and the Lawrenceville Branch at Lawrenceville, I know of no traffic that connection will accommodate, or any business that will originate on the Seaboard that will have its destination on the Lawrenceville Branch. None would originate on the Lawrenceville Branch that would find its destination on the Seaboard and would be accommodated by this interchange track. There would be no carload business on either road that would be accommodated, exchange business, business originating on one road and finding its destination on the other, business that would be transported by both roads. The only carload business that originates east and west of Lawrenceville would be cotton seed and cotton and wood. The most of that comes to Atlanta, Lawrenceville, Winder and Athens. The Seaboard earns a haul on
62 all of that under present conditions. I know of no new business that would be created by this connection.

Cross-Examination.

By Judge Hines:

If Mr. Cooper wanted to ship wood to Atlanta to points on the Southern Railroad in Atlanta, to do that from Grayson he could bring it to Atlanta and the Southern could shift it here. I don't know about his wanting to ship wood from up there, never had him ask me anything about it. I have been to Logansville, went through Grayson, never stopped there. It is not true that a large amount of cotton seed is purchased on the Lawrenceville Branch Railroad, not much through there. A great amount is purchased at Suwanee. Cotton seed moves in car lots almost entirely. If one of the plants, take the Lawrenceville Oil Mills, wanted to buy seed at Suwanee or at Duluth or at Buford or Norcross, the cotton seed would have to move, in carload lots, to reach that factory at Lawrenceville, through Atlanta and back over the Seaboard 35 miles. If this physical connection was made it would move into Lawrenceville and switch it there.

Re-direct Examination.

By Judge Loving:

With regard to the question with reference to the movement of wood from Grayson and Logansville, it would move

by the Logansville Branch to Lawrenceville, thence by the main line of the Seaboard and thence to the plant, and if the plant was on the Southern Railway at Atlanta, that would be a movement in which three carriers would be involved; and if it was carried over the Logansville Branch to Lawrenceville and over the Lawrenceville Branch to Suwanee and thence over the Southern, the same thing would be true, and that would require a higher rate. And the same thing would be true if it originated at Duluth; it would be routed over the Southern to Suwanee and routed by the Lawrenceville Branch to Lawrenceville and routed on the Seaboard from Lawrenceville to the point of destination, and three carriers would be
63 involved there, and the rate would necessarily be higher then where only two carriers are involved.

G. R. CARLTON, a witness called on behalf of the complainant, having been first duly sworn, testified as follows:

Direct Examination.

By Judge Loving:

I am superintendent of the Georgia Division of the Seaboard. Lawrenceville is on my division. The Seaboard is one of the trunk lines of the South; it operates through about five States. The Southern Railway is a trunk line. The Lawrenceville Branch is a branch line; it runs into Lawrenceville. I have never been over it. It is what is called a tap line, connecting with the Southern at Suwanee. It taps the Southern Railway at Suwanee and the Seaboard at Lawrenceville. They have terminals at Lawrenceville. I am familiar with the business of the Seaboard from Atlanta to Lawrenceville, and with the business that originates on the line east and west of Lawrenceville, and on the Logansville Branch. There is no business, carload business, that will originate either on the Logansville Branch or on the main line of the Seaboard Air Line east or west of Lawrenceville that would be accommodated by this physical connection—I can't see where it could. There is no business that would orignate on the Lawrenceville Branch destined to points on the Seaboard that would be accommodated there by such a connection, there is no station on the Lawrenceville Branch for anything to originate to be accommodated. I

understand they have got one flag station and handle passengers, no side tracks there; no loading facilities there. There are a number of plants located on the Seaboard main line and on the Logansville Branch at Lawrenceville. Those plants all have industrial tracks leading from the main line to the plants. Those side tracks and industrial tracks were established by the Seaboard; the older tracks were established at the Seaboard's expense, but the later tracks were paid for by the industries at a certain proportion, established jointly. If this physical connection is established and the Seaboard should be required to switch to and from these industries to the connection all freight carried over—coming in and going out over the Lawrenceville Branch, the compensation the Seaboard would receive for that service would be two dollars per carload; that would not pay the expenses of that service. You take a car and deliver it to us, we practically pay three days rental. If it is delivered at three o'clock this afternoon the Seaboard has to pay 45 cents today and then it stands 48 hours in which to unload it, and that is 90 cents more, then the consumption of fuel and train hauling it, it will practically cost four dollars where we get two. If we do that service, we would have to do it at a loss. It will cost us for more time to our local crews in doing this work, it is extra work. The main line local crew, the regular crew of the main line, would have to do this work, as the Logansville Branch line crew would be unable to do this work, would not have the time. It would affect the schedule of the Logansville Branch. We have a branch crew that comes in and stays there one or two hours and have regular trips to make. We have nobody there at Lawrenceville to do the switching, just use the crew of the train passing. The local train would do the work. To switch a car over our local train or the local crew of that train would have to do that switching, and that would delay the schedule of our local train and increase the time of the crew. From the connecting track it is brought around by the track to the freight depot, it would have about half a mile to switch.

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Cross-Examination.

By Judge Hines:

The Seaboard Air Line Railway now practically handles all the carload movements of freight to Lawrenceville; we switch

it in and the local trains place it. We have switching facilities to handle the carload freight that comes to Lawrenceville. In handling that freight we would have more tracks and more switching to do. If a carload came in on the Logansville Branch train we would carry it to the exchange track. If over the main line of the Seaboard it would take it would take more time to take it to the exchange track. If the Lawrenceville Branch happened to have a car out on the exchange track, we would have to back in. It would take eight or ten minutes more time. We get cars to these plants over there by the Logansville Branch engine on the short line and the main line engine on the main line. The fertilizer works is furtherest; the tannery is about a quarter of a mile away. It would take no more time to set cars on the exchange track for the Lawrenceville Branch than it would to take it and set it on the depot track, but it would take more time to get cars from the connecting track and take them to the industries, that had been delivered by the Lawrenceville Branch. It would take more time to get them from the connecting track and put them in the industrial tracks than if we had them in our train. The ones we have for the Lawrenceville Branch Railroad would have to be put on the Lawrenceville Branch railroad. We have a crew operating the Logansville Branch now and they have to lay over seven hours in Logansville. We would have to change our schedule in order to accommodate the connection; it is a question of law whether we can arrange it because of the sixteen hours a day provision. During the fertilizer season it would take three or four hours; the average time would be three hours a day the entire year around. Where two lines compete for traffic, it naturally moves over the line that gives the best and quickest service. The Seaboard does give the quickest and best service to Lawrenceville. If the Lawrenceville Oil Mill wanted to buy cotton seed at Suwanee—cotton seed moves in carload lots—they cannot buy at Suwanee under present conditions, but they can buy all they want on our line. They could buy it and ship it around by Atlanta but the freight rates would be prohibitive. If a man wanted to cut wood on the Logansville Branch of the Seaboard Air Line destined for points on the Southern Railway in Atlanta, it can be done now without that physical connection very easily, if it is an industry on the Southern Railroad

66 in Atlanta. The lumber plant could buy lumber in carload lots at any points on the Seaboard Air Line and let it go to Lawrenceville and dray it to the mill. In draying it to their mill it would cost them two or three dollars a car and it would cost them that much to have it switched. The Seaboard would get that drayage if they had this connection, but it would cost them about four dollars to do it. The Lawrenceville Manufacturing Company manufactures cotton goods. If this physical connection was made, they could load those cars at their factory and they could be transferred to the Lawrenceville Branch, and that cannot be done now.

Plaintiff introduced all the exhibits attached to its complaint, which are not recopied, but will be part of the record.

C. S. STRONG, a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

Direct Examination.

By Judge Hines:

I live at Lawrenceville, Georgia. I am manufacturing leather, making leather—running a tannery; connected with the Atlanta Tanning & Manufacturing Company. They make only sole leather at this time. Our plant is situated on the main line of the Seaboard. The depot of the Seaboard Air Line Railway is about half a mile from our plant. Our plant I suppose is about two hundred yards from the Lawrenceville Branch Railroad. It is a little bit further from us than the Seaboard. We use hides and tanning mixtures and various chemicals; we buy rough leather and refinish it. We get our coal in Tennessee. If this physical connection was put in we would get it from Virginia. We do not get it from the Virginia mines now. For some time after I first located at Lawrenceville I did get it from the Virginia mines, but there was some rule passed which I never did understand, and the Southern Railroad refused to bring this coal from the Virginia mines to Atlanta and turn it over to the Seaboard Air Line. They claimed they could not pass a junction point with it and Suwanee was a junction point. Lawrenceville being located on the Lawrenceville Branch Railroad, and we were forced to go

into the Tennessee market. The cost is very nearly the same considering the price of the coal at the mine, but the freight rate—the Tennessee coal is higher in price and cheaper in freight, and the Virginia coal being a little cheaper in price and higher in freight, but I can save on an average
67 about 25 cents a ton by buying the Virginia coal. I figure the Virginia coal saves me in steam 50 cents a ton and that the Tennessee coal is costing us 75 cents a ton more than it would if we used Virginia coal. We receive products that we use, the materials that we use in our factory, over the Lawrenceville Branch Railroad just as little as we can on account of the hauling, draying it down to our place. There is one extract that we use that we can't get duplicated anywhere else that we buy up at Brevard, N. C., on the Southern, and that shipment, a good deal of it comes to Suwanee and is transferred to the Lawrenceville Branch. This extract is put up in barrels and in tank cars. These barrels weight about seventy-five pounds apiece and contain about five hundred pounds of extract. Buying it in barrels and having it shipped in less than carload lots, which we do for two reasons. The principal reason is, we cannot dray it down to our place in barrels, a carload of barrels of extract, before demurrage will accumulate on it. Consequently, we buy less than a carload and pay a higher freight rate because we cannot get it in tank cars. The tank cars cost us twenty-five cents less a hundred pounds against thirty-six cents in the freight charges. It comes by the Lawrenceville Branch and over the Southern to Suwanee. If this physical connection were made I would buy the tank cars and have it moved in the same way and pay switching charges to get it to the plant at Lawrenceville. The Seaboard does not get any of that freight rate now. The freight rate is higher when it comes to Atlanta and it cannot go by the Seaboard; it is more than enough higher that we prefer to dray it. We use a year about fifteen or sixteen cars regular run. That freight would move over the Lawrenceville Branch if this physical connection was made. If we had that connection—well I am very friendly to the Seaboard Air Line, they have been nice to us, I would say this industry—well I am friendly to the Seaboard—I would be compelled, I think, from our standpoint, to get all of our coal by the Lawrenceville Branch because I could get it from the Virginia mines and I prefer to use that Virginia coal. Our products,

our manufactured products move from Lawrenceville to various—we sell to nothing but jobbers, but we have a great many drop orders for these jobbers to go to various places over the Carolinas and throughout this territory. Some of these are specified to go by the Southern and those
68 we have to dray to the Southern depot. The percentage of the outgoing product going over the Lawrenceville Branch is as little as we can, to save all the drayage we can, we get it drayed for us more often, but it is easier to the Seaboard than to the Lawrenceville Branch. The proportion of it going to the Lawrenceville Branch is as much probably as ten per cent. The smallest amount I can ship in carload lots of leather—they will set a car in for me for anything that comes containing five thousand pounds or anything going away containing five thousand pounds, they will set it in free of special charges. This physical connection to our plant would be a considerable advantage, in having use of either line we choose, incoming or outgoing. For a long time, and in fact up until last summer a year ago, the Lawrenceville Branch was a narrow gauge and we could not hope for a physical as long as it was narrow gauge, but when it was made broad gauge that was great rejoicing in that, for we have always felt that we were entitled to this connection and the business interests of the town rejoiced because we feel that we are not standing still, but we are growing and we expect to bring other enterprises to Lawrenceville. I am not a cotton buyer, but one of the cotton buyers told me from eight hundred to a thousand bales were marketed in Lawrenceville. It is a good cotton market. That cotton moves from Lawrenceville by both roads. The Lawrenceville Branch I should think gets the most of it; I don't know why it is. In that movement of cotton over the Lawrenceville Branch the Seaboard Air Line gets no revenue at all. If this physical connection was made it would get no revenue from that movement. You see both depots have cotton storage platforms and the buyer who expected to ship cotton over either the Seaboard or the Southern would have it put on the platform he expected to ship from. However, if a buyer had cotton on the Seaboard platform and found he could send it to better advantage on the Southern, he would be at a disadvantage. There are storage warehouses in Lawrenceville. I don't know but one, and that is on the Seaboard Railroad—well they may store cotton in both of

them and one of them the Lawrenceville Branch touches and the other it does not. I don't think there is much production of cotton seed along the line of the Lawrenceville Branch, but they have large ginneries at Duluth and little sta-
69 tions along the Southern Railroad which are close to the Lawrenceville Branch. I guess there are gins at Suwanee. Cotton seed moves in carload lots. Lawrenceville cannot get any cotton seed from points on the Lawrenceville Branch or the Southern Railroad in carload lots; they would be at a disadvantage in buying them over there on account of not being able to deliver them where they choose in Lawrenceville without draying them.

Cross-Examination.

By Mr. Watkins:

The price of Virginia coal and Tennessee coal, considering both the cost and the freight is about the same, but I consider the Virginia coal the better coal. Usually it is pretty close, but I had a contract with the Virginia mine at 25 cents less than I am paying now. I use about sixteen or seventeen cars a year and that moves over the Seaboard. I pay freight on I think forty tons to the car, the freight usually runs two dollars a ton, so it would be $80.00 a car for fifteen or sixteen cars. When we run regular, we use fifteen or sixteen cars, but we would not use that when we run light. If this physical connection were made and switching were made possible I would get those cars over the Southern and Lawrenceville Branch, and all the Seaboard would get on that would be two dollars on each of the fifteen or sixteen cars. That is all interstate business. Our extracts come from Brevard, N. C., and if there was a switching track to the Seaboard, that would all come over the Southern and the Lawrenceville Branch, and the Seaboard would get a switching charge only. Our outward movement at present is less than carload lots, and I give most of that to the Seaboard. We have to dray a good lot of it, but it is more convenient to dray it to the Seaboard depot. If this connecting track was put in, I would ship more freight over the Lawrenceville Branch than I do now, consequently I would ship less over the Seaboard. Our track was from the Lawrenceville Branch a little more than half a mile from the depot, but that is about the nearest point. If the Lawrenceville

Branch put in an industrial track to our plant it would be on an equality with the Seaboard, I could then ship either way I pleased. I have a Seaboard industrial track to our place, that was put in by the Seaboard. If this connection was made and the Seaboard refused to switch cars from the Law-
70 renceville Branch up to the industrial track, it would not be any advantage to me then. I don't know whether they could refuse or not; I am not posted on the law. There is one thing I would like to explain again. I overheard the testimony about the time it would take to switch these cars brought in over the Southern Railroad from the time that it takes now. When a car of coal comes in to us from Atlanta, the local runs up in the afternoon and down in the morning, and they bring that car of coal and they set it off there at the depot and set it in to us the next morning as they pass. Now if the Lawrenceville Branch brought that coal to Lawrenceville and set it in the storage track for the Seaboard, I cannot see where it would take any more time to take that car from that track than to pick it up from their own storage track at the depot. We could get coal from the Virginia mines through Suwanee and over the Lawrenceville Branch Railroad and save four to six days at least. It is at certain seasons of the year very important. Last winter I was put to considerable inconvenience by not getting coal.

L. R. MARTIN, a witness called on behalf of the defendant, having been first duly sworn, testifies as follows:

Direct Examination.

By Judge Hines:

I live in Lawrenceville, Ga. I am mayor of the town and have been for two years, this is three years. I am manager of the Allen Manufacturing Company. The population of Lawrenceville, I believe the census of 1910 gave it between fifteen and sixteen hundred; I think it would safely run to two thousand now. The Allen Manufacturing Company makes horse collars. We use hull fiber, leather and we get the hull fiber from North and South Carolina and some from Atlanta. I guess about 25 or 35 cars of this hull fiber is used a year, depends on the weight of the car. We can get this fiber at points

on the Southern Railway in South Carolina and North Carolina. I get it in South Carolina, get it in Charleston, S. C., and Orangeburg, and maybe several other places in North Carolina, get it at Camden and Charlotte and other points; I don't call to mind now just all the places. The most of it comes over the Seaboard, some of it is brought to
71 the Lawrenceville Branch depot. That that comes over the Lawrenceville Branch Railroad in carload lots, I think that is sent—I think we have gotten about four cars, I think two of them came from Charleston and one of the [them] from Bennetsville and maybe one from Camden, up there, I don't remember just where. This physical connection to our factory, the Allen Manufacturing Company, would save me draying this. Our factory is located on the Seaboard main line. That is the reason I had to dray this stuff from the Lawrenceville Branch down to my plant. The effect of this drayage expense on the movement of this fiber just makes it cost me fifty cents to a dollar more. This fiber that moves by the Southern Railway and the Lawrenceville Branch, The Seaboard Air Line derives no revenue from that movement. If they switched it to my plant they would get the switching charges on the movement. I do not call to mind just how many cars moved over the Southern. The first of the season I had a request from a customer for a carload of stuff in Selma and a carload of stuff in Greenville, Miss., and a great many of our customers ask for it to come over the Southern. Our margin of profits this season has been such that I could not respect that because it cost me so much to haul it to the Southern depot, or the Lawrenceville Branch depot. Some of it, however, I do dray to the Lawrenceville Branch. I believe the maximum car is sixteen thousand pounds of my product. They have delivered me a car for five thousand pounds. I hardly ever haul five thousand pounds up there because it costs me too much to do it unless I ship to jobbers, unless it is some man on the road up there where the difference in the freight rate would be so great, in that instance I haul it to the depot. There is one cotton warehouse there at Lawrenceville. It is on the Seaboard—well, there is two warehouses, I don't know if you can count if [it] a regular warehouse, a cotton warehouse or not, it is under the Farmers' Union.

Cross-Examination.

By Mr. Watkins:

Our raw materials amounts to about twenty-five of [or] thirty-five cars a year. That comes principally from North and South Carolina and it comes to us principally by the Seaboard from Atlanta. The freight per car I pay on that, the average rate would be, I presume, about $30.00 to
72 $50.00 a car. All of that is delivered to me now by the Seaboard except four cars a year hauled by the Lawrenceville Branch, and that is all interstate freight, from North and South Carolina. If this connection were made so it could be switched to our plant I would not get all of our stuff by the Lawrenceville Branch. Some of the points the Seaboard can handle it just as well as the other road. Some points in North and South Carolina where I now get it, the Seaboard can bring it just as well as the Southern could if I had this connection. I would give more business to the Southern and the Lawrenceville Branch if they had this connection and it was operated. The price they make me you see is based—you take at Charlotte, as I understand it, the switching price there controls the parties making me the price, the price they have to pay to get it to the Seaboard, and I have to pay that, you understand. I don't know whether I would get some of it over the Southern—perhaps I would not be as particular about my routing on it as I am now because it costs me five or six dollars or ten dollars a car when it comes over the Lawrenceville Branch. I don't know whether I could use the connection. I could have it if I wanted it, and the Seaboard would lose that business to the extent I used the connection, and the Seaboard would only get two dollars for the switching business. When shipped to the mill it goes over the Seaboard to Lawrenceville; nearly all goes over the Seaboard. If I had this connection I would ship more of it over the Lawrenceville Branch. That would be a constant loss to the Seaboard. I had a carload sale at Greenville, Miss. There is a through rate to those points, the same rate as going the other way. If I had this connection I would probably ship around the other way because the customer wanted it to come that way, and that would be a loss to the Seaboard of the haul from Lawrenceville to Atlanta.

D. Y. HODGES, a witness called on behalf of the defendant, having been first duly sworn, testifies as follows:

Direct Examination.

By Judge Hines:

I live at Logansville, Ga. The population of Lo-
73 gansville is about seven hundred and fifty. I am in the mercantile business, cotton and fertilizer, a shipper of cotton. The town of Logansville has no need for this physical connection between the Seaboard Air Line and the Southern at Lawrenceville so far as I know, except the Carolina mill points on the Southern Railway, the cotton mills on the Southern in Carolina, the Packard Mills at Gainesville. 5,500 bales of cotton were marketed at Logansville last year, I think it was. There is a demand for that cotton at points on the Southern, Gainesville especially. I used to buy at Winder for those mills. I can't ship to Gainesville and those points on the Southern in Carolina on account of the freight.

Cross-Examination.

By Mr. Watkins:

I do not know the rate on cotton from Logansville to Gainesville. I do not know whether there is any difference in the rate by the Lawrenceville Branch. I do not know whether I could get into Gainesville or not if I had this connection. I don't know what the rate would be then, you know, but I presume it would be—the Packard Mills told me they could not handle my stuff on that account. I can reach Gainesville by Lawrenceville and Atlanta, go down to Atlanta and back the Gainesville Midland. Our present object is to get to Carolina points and get our cotton seed hulls and meal from Elberton. I have no trouble in getting all the hulls I want.

W. A. COOPER, a witness called on behalf of the defendant, having been first duly sworn, testifies as follows:

Direct Examination.

By Judge Hines:

I live at Grayson on the Loganville branch. I got two or three little businesses. I am president of the Grayson Supply Company and the Bank of Gainesville, and I got a fertilizer mixer down there, the Grayson Home Mixture Company. I am president of the Lawrenceville Oil Mill on the Logansville Branch, something like a quarter or three-eights of a mile I guess from the Lawrenceville Branch. We get our cotton seed from all the ginning points around there like Logansville,
Grayson, Lawrenceville, Dacula and Auburn on the
74 Seaboard and some on the Lawrenceville Branch.
Cotton seed moves in carload lots, except the local seed around the mill, that is in wagon lots. We haven't bought but a few seed on the Lawrenceville Branch, and they came some in sacks, one carload came sacked and the other in bulk and we had to haul them in wagons up to the mill. We don't buy cotton seed on the Lawrenceville Branch on account of having to dray it and it will cost me forty to fifty cents a ton to dray it to the mill, and the same thing on the main line of the Southern and we got some from over there last year. We ought to reach Norcross and Buford on the Southern main line and Suwanee. I did buy from those points on the Southern Railroad, bought some there this season, bought some at Duluth, I don't know, about two or three carloads, had a man on salary the whole season at Duluth buying for us. The Seaboard Air Line did not derive any revenue from those two or three carloads of seed. If the physical connection was made and under operation, those seed would then reach our factory after they got to Lawrenceville by being switched across, I judge, from the Lawrenceville Branch to the mill. The amount of our products that would move over the Lawrenceville Branch if this physical connection was made would depend on how bad they want our product. We can sell all we have at other places. They wanted some hulls over there this year, but we did not ship on account of the drayage; no trouble about getting rid of them. Our total amount of output of oil is several cars; the total output of hulls, I judge, twenty-five

cars, and meal twenty-five cars that we ship. None of that we ship now over the Lawrenceville Branch, not any of the output of the mill. If the physical connection was made I don't judge more than one-third or one-fourth would go over the Lawrenceville Branch. We use coal in our mill from Tennessee. If this physical connection was put in, it seems to me we could handle twenty-five cars of seed from the Southern and they would get the output of the oil mill to haul somewhere. Somebody would have to handle it. I don't know, I am just guessing about that; I don't know about it. There is no new
75 business down at Grayson that the Seaboard Air Line would get if this physical connection was put in, none that I know of that the Seaboard would get. I am engaged in the wood business. I ship a good deal of wood from Grayson and Logansville and some from Lawrenceville. I can ship wood from Grayson into Atlanta. I have no demand for it that I cannot now supply, not right at present, but I found one or two that I couldn't sell wood to because they say I am on the Seaboard and they can't handle it. I never figured why, I did not question. They wanted it put on the Southern. I reckon their yards are on the Southern, I don't know, I never inquired; they could not handle it. If I could ship wood to reach points in Atlanta on the Southern Railroad, I don't know that I could ship more, I am shipping all I get, but I might a better market, I don't know. Mr. Ambrose up there handled some of my lumber, but on account of the draying I had to quit shipping him and ship to Atlanta or sell it locally. I had to pay for draying the last car and it knocked my profit out. It seems to me if the Lawrenceville Oil Mill had that territory in there it would give it something to do to haul the oil and meal and hulls, the output of the Lawrenceville Oil Mill, and the cotton men at Grayson and Logansville, I have heard them say if they had an outlet to Carolina mills they might get a better market, and the wood and lumber business might get a better market. We are deprived by this lack of physical connection, the Lawrenceville Oil Mills, of at least half the territory in the country. It knocks the profit out when we dray the seed.

Cross-Examination.

By Mr. Watkins:

We want something to switch cars from one track to the other at the Lawrenceville Mill. If I ship wood to Atlanta the

Seaboard gets the haul. If I had this connection and it was used, the Seaboard would get the haul from Grayton to Lawrenceville and the Southern would get the balance of it; I have had some customers that wanted it shipped by the Southern; and the Seaboard would lose business if it had that connection. I ship all the wood I have and have a market for all of it. I have an output of twenty-five cars of hulls.
76 None of it goes to the Lawrenceville Branch now, but I think it would be about one-fourth to the Lawrenceville Branch and three-fourths to the Seaboard. Now the Seaboard gets it all, and it would lose about one-fourth of that. When our coal comes in from Tennessee the Seaboard gets it all. If it came from Virginia the Seaboard would not get any of it. I did get seed by the Southern Railway. The most of the seed I now get comes in over the Seaboard and the Logansville Branch. I do not know anything about what the rate would be to Atlanta if I moved via the Lawrenceville Branch to Suwanee and by the Southern to Atlanta; I don't know how it would compare with the present rate from Lawrenceville by the Seaboard. We handle about 2,000 tons of cotton seed a year; I think ordinarily to the car there is about 20 tons, and the most of that the Seaboard brings to us. The average freight on that, I guess, is fifty to seventy-five cents a ton, $10.00 or $15.00 a car. No business from the oil mill would go to points on the Lawrenceville Branch, nowhere to go there, it is just eleven miles of road, no place to put it. There is not a station on that branch.

Re-direct Examination.

By Judge Hines:

If this physical connection was put in and this other territory was opened to us, I could get seed then that I need at our factory; I think so, yes, sir; of course we would have competitors about getting them.

A. T. GREEN, a witness called on behalf of the defendant, having been first duly sworn, testifies as follows:

Direct Examination.

By Judge Hines:

I live at Lawrenceville. I think there is anywhere from eight to ten thousand bales of cotton received and sent to Lawrenceville. There are cotton warehouses at Lawrenceville. There is one of them on the Seaboard and the Southern and one on the Seaboard. The one on the Seaboard does the larger business. No cotton warehouse on the Lawrenceville Branch, but they ship cotton over there. There is a platform that they weight cotton at. The proportion of cotton from the Lawrenceville market moving over the Lawrenceville Branch Railroad,

77 I think about sixty per cent is shipped over the Lawrenceville Branch Railroad. If this physical connection was made it would not facilitate the shipment of cotton from Lawrenceville. I am connected with the Lawrenceville Fertilizer Company. I was formerly connected with the Lawrenceville Oil Manufacturing Company; I was president and general manager. I did have occasion to buy cotton seed upon the Southern Railroad adjacent to the Lawrenceville road in 1911. I guess I bought seven or eight hundred tons. Some of the seed on the Lawrenceville Branch I bought I did use, but a good many of the seed I bought on the Southern I sold because the freight was too high around Atlanta, and I had to have it shipped to Atlanta. I did not use cotton seed in the markets adjacent to the Lawrenceville Branch, and on the Southern Railroad at points near the Lawrenceville Branch, because of the expense of hauling after getting them, the drayage from the Lawrenceville Branch Railroad. I sold a good deal of our stuff on the Southern Railroad, the meal. I did not sell many hulls on that road because I could not manage it. I could not manage the hulls to dray them up there. If this physical connection was in, it would move by loading it at the mill on the car and go right on the Southern. The Lawrenceville Oil Mill is located on the Logansville Branch of the Seaboard. The Seaboard derived no revenue from that meal I sold and sent to points on the Lawrenceville Branch Railroad and the Southern Railroad. If this connection was in, they would receive the switching

charges. There is a market all over the country for hulls where there is any sized town, and why that is so, they are loaded in bulk and we don't have to sack but to ship the hulls loose, had no sacking machine, we could not sell hulls on the Southern road for that reason, on account of the drayage to the Lawrenceville depot. If this physical connection had been in operation, I could have then sold hulls to those parties. I am president and general manager of the Lawrenceville Fertilizer Company, located on the main line of the Seaboard about a mile to the Lawrenceville Branch. That company makes fertilizer. The output of the factory is about 4,500 to 5,000 tons. We use potash, cotton seed meal, tankage and acid phosphates. We get the bulk of our acid phosphate from East Point, Georgia, and buy cotton seed meal at any point I get the best price, and the tankage from Oklahoma and Cincinnati. The advantage this physical connection would be to the fertilizer plant—I don't know that it would be any; I don't know exactly what it would do only on my incoming freight. You take Buford and Flowery Branch and Toccoa, they have all got oil mills and we can't use that meal on account of the drayage. I might strike an oil mill where it would be cheaper on the Seaboard. Our territory is divided, on the Seaboard and the Southern. We have got markets on the Southern for two thousand tons and I ship about two thousand on the Seaboard. The Seaboard Air Line derives no revenue from those two thousand tons that I sell on the Southern Railroad, except they get switching charges from the factory to the warehouse. We have to unload it and reload it on the Southern train. We load at the factory and switch to the warehouse and we unload there and reload. If this physical connection was put in we would not have to go through that operation. It cost me six dollars a car to handle it that way. I don't know. I think it would be a great benefit to the public to have the railroads connected, and I know it would be to me because I ship, say, two thousand tons in cars over the Southern road and it costs me $400.00 to transfer it. If this connection was in, the Seaboard would receive switching charges for that service. There are points of delivery of our goods on the Lawrenceville Branch Railroad. We have delivered cars of this stuff at Huff, Peachtree Grossing and Johnson Crossing. They deliver carload lots on the Lawrenceville Branch Railroad. When I was connected with the Lawrenceville Oil Mills they would deliver

carload lots from the Lawrenceville Branch at Lawrenceville to our factory. Carloads of seed were shipped on the Lawrenceville Branch Railroad while I was connected with the oil mill; they would be loaded on the Lawrenceville Branch. I bought seed at Huff and Peachtree Crosing. When they got to Lawrenceville they were transferred from those cars to the factory. I had to dray them over to the oil mill. If this connection was in they would have been switched over there by the Seaboard.

Cross-Examination.

By Mr. Watkins:

If I had this connection I don't know if I would ship more over the Lawrenceville Branch for the fertilizer company than I now do because I fill my orders. The advantage to me if I shipped the same amount, it would cost me four hundred dollars. Our particular object is to save our making this transfer across our warehouse; that is the way it would affect me. The Seaboard would also get the switching charges for switching it over to the Lawrenceville Branch. They would get no more charges for this than they do now. This tankage and acid phosphate that I get at East Point, all that moves over the Seaboard from Atlanta, and the Seaboard gets a long haul on it. It would not move by the Southern. I said so in the other fight. I would have it shipped by the Seaboard. If the connection was made, it would not affect that movement at all. The fertilizer warehouse is on the industrial tracks of both roads; one on one side and the other on the other. The movement of cotton in Lawrenceville would not be affected if this connection was made. Cotton is brought from the country by the farmers and delivered to which ever warehouse the customer wants it delivered. He can have it delivered on the Lawrenceville Branch or the Loganville Branch of the Seaboard main line, just as the purchaser wants.

J. L. EXAM, a witness called on behalf of the defendant, having been first duly sworn, testifies as follows:

Direct Examination.

By Judge Hines:

I live at Lawrenceville. I am with Mr. Ambrose in the lumber business; the style of the firm is J. A. Ambrose & Co. We manufacture frame and mantels and everything necessary for the building of a house. Our plant is situated on the Lawrenceville Branch. Our output goes to the neighboring towns around Lawrenceville, Grayson, Auburn, Dacula, Gloster, Tucker, Milner and Suwanee. We ship by carload lots occasionally to points on the Seaboard Air Line. We get our stuff from our mill to the Seaboard Air Line by draying it. This physical connection would affect the business of J. A. Ambrose & Co. because we could have the car placed at our plant and loaded right there and save us from this about eight dollars a car. The operation of this physical connec-
79 tion might give additional freight to the Seaboard Air Line; we might have more come in over the Seaboard. I don't know that we would deliver any more over the Seaboard, but we would have more come in that way possibly because we could handle it from the yard then. At this time, if it comes in over the Seaboard we could not handle it from the yard because our shops are on the Southern themselves, but we have a warehouse on the Seaboard for shingles and lumber, but the shops are on the Southern. The most of our lumber comes from Alabama and Florida. We buy some from Grayson, Logansville, and have bought a little on the Seaboard at Lilburn. We can get it delivered in the yard cheaper than we can pay freight and drayage, pay freight from neighboring towns. We use between forty and sixty carloads per year. If this physical connection was in operation, I could not tell how many carloads I would ship to points on the Seaboard Air Line more than I do now. Of course, we would give the Seaboard more, because we could save that drayage and could make our customers a much better price. There is a demand on the part of the public for this physical connection.

Cross-Examination.

By Mr. Watkins:

If the Seaboard refused to switch cars over this connecting

track it would not be any advantage to us to have the track. The most of our lumber comes from Alabama and Florida. I did ask the Seaboard to put in an industrial track to our plant and they agreed to do it for $466.00.

G. H. DUGAN, a witness called on behalf of the defendant, having been first duly sworn, testifies as follows:

Direct Examination.

By Judge Hines:

I am a civil engineer and am assistant engineer of the Southern Railway. Referring to the first plan of connection, the connecting tracks is nine hundred and forty-five feet; none of it is on the Seaboard Air Line right of way—they may have the right of way to this spur track, and in that case there would be a short distance of it put on their right of
80 way. It connects with the spur from the Logansville Branch, the spur to the Lawrenceville Manufacturing Company. If it was connected in that way in the operation of trains on the main line of the Seaboard Air Line, I don't see that there could be any danger to trains on the main line, would not be any danger to trains on the main line; no, sir. A car might possibly roll off of that spur on to the Logansville Branch. The spur is about five hundred feet long. It is five hundred feet from the end of the connecting track, where the connecting track connects with the spur, to the Logansville Branch. The reasonable cost of that connection I think was about nineteen hundred dollars; I embraced in that estimate the cost of right of way; that is, about the first six hundred feet of the right of way after leaving the right of way of the Lawrenceville Branch; it is really about four hundred feet of the right of way; that does not include all the right of way occupied by the connecting track by that plan. Three hundred and forty-five feet is on the property of the Lawrenceville Manufacturing Company. I understand that they would grant that portion of the right of way free. That connection is a practicable and feasible connection, I think that I may say that it is, should say that it could be operated with reasonable safety. In my opinion as an engineer, the plan of physical connection between those two roads by running down to

the Seaboard main line would be practicable and feasible. It could be operated with safety to the operation of trains on the main line of the Seaboard Air Line Railway; I think there is loads of room; there is fourteen feet now, that makes, between the cars standing there at the same time, if that should happen about four feet. You could put a derailing device on it, but I see no necessity for that. If a car came down there it would roll off the end of the track any way; I think it would turn over the other way because the ground slopes toward the track; they could use what are called bumping posts. If the storage track was elevated toward the end, it would have to be extended considerably, a considerable distance to get elevation enough to stop the car you would have to go far enough to raise it twelve feet or such a matter; at least that much. In making the connection, as proposed by Mr. Artman, if
81 a car should come loose there, it would not foul the main line under ordinary circumstances, would not be so apt to, at any rate, as if connected down here at the main line. If it was connected down here and a car rolled down there it would go on the main line. The plan is thirteen feet wide, that is the requirement. The length of it is seven hundred and twenty-five feet. The right of way would take four tenths of an acre. The proposed plan of connection by the Artman plan is a practicable, feasible and safe connection.

Cross-Examination.

By Judge Loving:

The first plan was made at the direction of Mr. Miller, the secretary of the Lawrenceville Branch Railroad, who is also assistant to the president of the Southern Railway; his office is here in Atlanta. I am an employee of the Southern Railway and did that work as an employee of that company. There is a difference of twenty-five feet in the elevation of the two roads, the Logansville Branch and the Lawrenceville Branch, approximately. The Lawrenceville Branch is approximately twenty-five feet higher than the Logansville Branch. When confronted with conditions of that kind, the difference in elevation, the longer you make the connection the safer it will be, the better grade you will have. In making that estimate there for that first plan, I took into consideration the right of way at three hundred dollars. The land that belongs to M. C. Renwick, I do not know that he would sell it for that; I

do not know whether it can be acquired at all except by condemnation proceedings. I did not make any provision for storage tracks. There is a storage track up there, the Lawrenceville Branch storage track, that may be used for storage. The Seaboard would not carry the cars on around the connecting track there to the Lawrenceville Branch, the Lawrenceville Branch would come and get them there at that connection and the Logansville Branch would have to have a storage
82 track. I did not make any arrangements for that at all. That industrial spur, to be operated while the connection was being operated, the cars on the spur would have to be pulled off and put on the Logansville Branch, the main line of the Logansville Branch. With that elevation cars might get away up there, probably would get away up there from the Lawrenceville Branch and run down that grade and if that would happen and cars were standing on that industrial track at that plant it would cause a collision there; that is possible, and if it came down it would gather speed all the way. The first plan prepared by Mr. Artman, an engineer of the Seaboard, was something after the plan I had adopted in No. 1, and has better grades and curvature. That is always an advantage. The distance is greater, too, and storage tracks are provided there, storage tracks at both ends are necessary if there is a great number of cars to be moved; if there is any number of cars at all to be moved, they would have to place them somewhere; some storage tracks would be an advantage. The plan of Mr. Artman is a safer and better connection than the one proposed by me, the curvature is easier and the grades are better. The last plan is a combination of the spur track already running to the industrial plant from the Lawrenceville Branch. The hazard is less between the branch lines than main lines, a connection between branch lines than between the main line of the Seaboard. The plan proposed there, No. 2, there isn't any hazard there at all to the main line of the Seaboard Air Line Railway. By No. 3 there would be a hazard so far as the switch on the main line is concerned. A switch or anything of that kind increases the hazard to a certain extent. If a lot of cars got away on the Lawrenceville spur and came in collision with these cars on the storage track, a bumper at the end of the storage track would be knocked down and the bumper would not help the situation any.

83 SAMUEL C. CARTER, a witness called on behalf of the defendant, having been first duly sworn, testifies as follows:

Direct Examination.

By Judge Hines:

I am manager of the Lawrenceville Manufacturing Company, manufacturing cotton into hosiery yarn. The Lawrenceville Manufacturing Company is located on the Logansville Branch. Our mill consumes about 1,200 bales of cotton a year. The output of our factory goes to the east and some locally. Our monthly output of yarn is about fifty thousand pounds. The portion of that now moving over the Seaboard Air Line Railway is about half. The other half now goes over the Southern, at least the branch road over to the Southern; it moves over the Lawrenceville Branch and thence over the Southern. This physical connection would benefit the Lawrenceville Manufacturing Company because we could load cars there instead of draying it to the Southern Railroad. The Seaboard Air Line Railway does not now receive any revenue from our product that moves over the Lawrenceville Branch Railroad; that that goes over the Lawrenceville Branch that connects with the Southern at Suwanee. We load at the depot now right at the mill. With the proposed connection, the Seaboard would have the switching movement to the Lawrenceville Branch Railroad. We use 60 to 65 cars of coal a year, a little over a car a week. Without this physical connection we cannot get any of this coal from points on the Southern Railroad, not unless we drayed it. We have no connection with the Southern. We could not afford to dray it. We ship to High Point, N. C., on the Southern. Freight routed by the Southern to go to Lawrenceville comes over that branch road. We might buy on the Southern is [if] we had that connection; it would be just a matter of where we could get our stuff cheaper and deliver it. We cannot go into cotton markets at points on the Southern Railroad for coal or for cotton without this physical connection.

Cross-Examination.

By Mr. Watkins:

In my outward shipments I divide them about equally between the roads now. We have a customer on one road and one on the other—one on the Southern and one on the Sea-

board. If this connection were put in the movement of our product probably would not be changed; those I now sell to, the goods would have to go the same way they do now, and the only benefit we would get on account of the connection being operated would be to save the drayage. Our
84 output now goes from Lawrenceville to High Point, N. C. Our coal comes from either Tennessee or Kentucky. If this physical connection was in and the Seaboard refused to switch cars, it would do no good. If the Lawrenceville Branch Railroad would put in a spur track to our plant, just as the Seaboard has to our plant, it would answer every purpose that I desire. Our coal is now hauled by the Seaboard and it gets all of that haul, and if I could get it over the Southern that would be that much hurt to the Seaboard. We pay freight on coal about $80.00 per car, and we use sixty cars a year. If a spur track was run to our plant from the Lawrenceville Branch it would not make any difference whether that was connected with the Logansville Branch or not. If we had a track on the other side of our plant connected with the Lawrenceville Branch, that would give us everything we desire.

Redirect Examination.

By Judge Hines:

The Seaboard does not get all of that two dollars a ton for coal; they get the connection here in Atlanta, I guess. We buy now in Tennessee. If they only move it from Atlanta to Lawrenceville, a distance of thirty-five miles, that is all they get out of it. We can't buy in the Virginia markets, not and have it delivered in car lots, because the Seaboard does not reach that point, as I understand it.

E. M. PRICE, a witness called on behalf of the complainant, in rebuttal, having been first duly sworn, testifies as follows:

Direct Examination.

By Judge Loving:

I am chief clerk to the Assistant General Freight Agent of the Seaboard. I have charge of the traffic office. I have had about 17 or 18 years experience in railroad rates and tariffs. All of them come within the purview of my duties here in this office. The rate on a shipment of wood from Grayson, on the Logansville Branch Railroad by way of Lawrenceville, and thence over the Seaboard main line to Atlanta, in carload lots, would make a double shipment, the shipment would have to be shipped to Lawrenceville and reshipped; moving over the Logansville Branch to Lawrenceville, and thence over the Seaboard main line, that is, nine dollars a car of ten cords. That is the regular State Railroad Commission scale of
85 rates. Now, if the same shipment moved over the Logansville Branch to Lawrenceville and thence over the Lawrenceville Branch to Suwanee, and thence over the Southern to Atlanta, that would be thirteen dollars a car, a difference of four dollars a car. That would be a combination rate, the rate from Grayson to Lawrenceville and then the rate from Lawrenceville to Atlanta, three roads involved in it, two roads from Lawrenceville to Atlanta via the Lawrenceville Branch, but the rate is, of course, the same from Lawrenceville as over the Seaboard direct. It is not that three different roads are interested, but it is the combination rate on Lawrenceville. There would be a difference of four dollars. Then, a shipment which now moves over the Logansville Branch from Grayson to Lawrenceville, and thence over the Seaboard, that rate is four dollars less than if it moved the other way. The rate on cotton from Logansville to Gainesville via Lawrenceville Branch and the Southern is thirty-one cents per hundred. The lowest rate is via Winder and the Gainesville Midland. The Seaboard to Minder and the Gainesville Midland. That way it is twenty-six cents. That rate is now in effect and applies to carload movements. As a matter of fact, freight does not move that way, and that is five cents a hundred less via Winder than via Lawrenceville and the Lawrenceville Branch Railroad. In making the rate to Lawrenceville and

via the Lawrenceville Branch Railroad you have three railroads to deal with, and via Winder you have only two, the Seaboard and the Gainesville Midland. The rate is fixed by the Railroad Commission of Georgia. The statement I am making is from the scale of rates fixed by them. The present rate on coal shipped from the Virginia mines by way of the Southern and the Seaboard to Lawrenceville, over the V. & S. W., which is known as the Southern Railway Virginia mines, and also over the C. C. & O. and over the N. & W. Virginia mines, is $2.15 to Lawrenceville. That is the joint rate between the lines interested, all the lines interested. If this physical connection was established that they speak of, or whether that is established or not, the present rate for that same coal is $2.15 by way of the Southern and thence over the Lawrenceville Branch; that would also be the rate, identically the same rate. If it comes over the Seaboard from the Virginia mines, it would come by way of Atlanta, over the Southern
86 to Atlanta, and coal from the C. C. & O. would come by Bostic, N. C., and thence over the Seaboard to Lawrenceville. And in either event, the rate is the same by either route. These industries at Lawrenceville, if they desire, can go to the Virginia mines and buy coal and have it delivered at their plants located on the Seaboard at $2.15, just the same rate that applies to the Southern and the Lawrenceville Branch, delivered by that road. They can do that today. I have investigated the rates on fiber from Charleston and other South Carolina points that were mentioned, Orangeburg and Camden and Charlotte, N. C., and the rates are the same; the same when routed over the Seaboard as if routed over the Lawrenceville Branch. One of these plants, if located on the Seaboard, can go to Charleston and purchase the fiber and have it come in over the Seaboard at the same rate that they could have it come in over the Southern and the Lawrenceville Branch. I investigated the outbound shipments from Lawrenceville to Selma and Greenville, Miss., and the same rate applies by the Seaboard that applies by the Lawrenceville Branch. The rate is the same over the Seaboard as over the most direct route; the Seaboard is the most direct route; there is something to be saved in the matter of time by shipping over the Seaboard; it would reach its destination sooner because the transfer at Suwanee would not be necessary in the movement over the Seaboard.

Cross-Examination.

By Judge Hines:

The freight on wood from Grayson, on the Logansville Branch of the Seaboard Air Line, to Atlanta, is nine dollars per car of ten cords. That is the actual rate. The rate for the same from the same point of origin to Atlanta via the Lawrenceville Branch road and the Southern to Atlanta would be thirteen dollars per car of ten cords. I don't know what you call a paper rate in that instance, if a shipment moved by that route, it would be thirteen dollars; that is the rate prescribed by the Commission. I say if a shipment moved via Lawrenceville and then by the Lawrenceville Branch and the
87 Southern, the rate would be thirteen dollars; that is, according to the Commission's scale. The railroads do not always charge the full rates allowed; they often make lower rates than the Commission scale. The rates for carloads or less than carloads from Lawrenceville is the same by either line, either the Seaboard or the Lawrenceville Branch and the Southern. Via Lawrenceville and Suwanee the actual rate is thirty-one cents. I mean to say that is the rate charged now—I see no reason why they should not—the rate on cotton from Logansville to Lawrenceville and thence over the Seaboard to Winder, and thence over the Gainesville Midland to Gainesville is twenty-six cents. That is the Commission rate; that is a combination of the two, less ten per cent. There is no movement in carload lots or any actual movement of cotton from Logansville to Lawrenceville and over the Lawrenceville Branch to Suwanee, and thence over the Southern to Gainesville. The rate on cotton from Lawrenceville and other near points is the same by either road. If cotton wanted to move from Logansville to New Holland, say, two or three miles beyond Gainesville, the rate over the Seaboard Air Line and the Southern would not be different. I don't know that the connection would have anything to do with it. The rate is cheaper by another route than the proposed connection route. I am not sure, there is not any movement by the Lawrenceville Branch Railroad, because business can be handled in there over the Gainesville Midland. As a railroad man I know that there could not be any movement in carload lots via Lawrenceville and the Lawrenceville Branch, and it would not move that way if they had a connection; the rate does not make that

way. Freight would move from Selma, Ala., to Lawrenceville, Ga.—the natural route would be by the W. of A. and A. & W. P., and Seaboard at Atlanta, or the L. & N. and Seaboard at Birmingham. And from Greenville, Miss., would
88 be either the Y. & M. V. and Frisco, and Seaboard at Birmingham or the Southern direct, and the Seaboard at Atlanta. Occasionally there is delay at Atlanta.

Hearing closed.

Blue prints showing plans 1, 2 and 3, were introduced by both parties, and it is agreed that such blue prints may be identified by the trial Judge and sent up with the record, but not to be printed, for the information and convenience of the appellate court, the originals to be sent up.

It is hereby stipulated and agreed that the above and foregoing is a condensed form of all of the evidence essential to a decision of the questions presented by the appeal of the Seaboard Air Line Railway in this case. And it is agreed and stipulated that the same may be filed as the evidence in the above styled case, to be included in the record thereof.

This 19 day of July, 1913.

W. G. LOVING and
EDGAR WATKINS,
Solicitors for Seaboard Air Line Railway.
JAMES K. HINES,
Solicitor for Railroad Commission of Georgia, Charles Murphy Candler, George Hillyer, Joseph F. Gray, Paul B. Trammel, James A. Perry, Campbell Wallace and James K. Hines.

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89 ORDER.

It appearing to the Court that the above and foregoing statement in condensed form of the evidence is true, complete and properly prepared, it is

Ordered, decreed and adjudged that said statement be, and the same is hereby, approved; and it is ordered that it shall

be filed in the Clerk's Office and become a part of the record for the purposes of appeal. And the foregoing stipulations are approved. This 19 day of June, 1913.

WM. T. NEWMAN,
United States Judge.

Filed in Clerk's Office 19th day of July, 1913.
O. C. FULLER, Clerk.
By J. D. STEWARD, Deputy.

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90 ORDER ALLOWING APPEAL.

In the United States District Court for the Northern Division of the Northern District of Georgia.

Holding Sessions at Atlanta.

Seaboard Air Line Railway
vs. In equity.
Railroad Commission of Georgia, Charles Murphey Candler, George Hillyer, Joseph F. Gray, Paul B. Trammel, James A. Perry, Campbell Wallace and James K. Hines.

The above named Seaboard Air Line Railway has prayed an appeal from the final decree signed by the Hon. Wm. T. Newman, Judge of said Court, on the 7th day of June, 1913, in the above entitled cause to the Circuit Court of Appeals for the Fifth Circuit, said decree being against said petitioner, and has presented its petition for appeal simultaneously with an assignment of errors, it is

Ordered, that an appeal be, and the same is hereby, allowed to the United States Circuit Court of Appeals for the Fifth Circuit from the said decree against said Seaboard Air Line Railway, decreeing it not to be entitled to recovery and not entitled to an injunction; and it is further

Ordered and directed that said petitioner, Seaboard Air Line Railway, execute a bond to the opposite parties, Railroad Commission of Georgia, Charles Murphy Candler, George Hillyer, Joseph F. Gray, Paul B. Trammel, James A. Perry, Campbell Wallace and James K. Hines, in the sum of three hun-

dred dollars, to answer all costs if it shall fail to sustain its appeal; and that a certified transcript of the record and proceedings herein be forthwith transmitted to said United States Circuit Court of Appeals for the Fifth Circuit.

This July 19, 1913.

WM. T. NEWMAN,
Judge, United States District Court.

Filed in Clerk's Office, 19 day of July, 1913.
O. C. FULLER, Clerk.
By J. D. STEWARD, Deputy.

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91 ASSIGNMENTS OF ERROR.

In the United States District Court for the Northern Division of the Northern District of Georgia.

Holding Sessions at Atlanta.

Seaboard Air Line Railway
vs. In equity.
Railroad Commission of Georgia, Charles Murphey Candler, George Hillyer, Joseph F. Gray, Paul B. Trammel, James A. Perry, Campbell Wallace and James K. Hines.

And now at the time of filing its petition for appeal in the above styled cause, Seaboard Air Line Railway, complainant in the original bill, petitioner for said appeal, a corporation under and by virtue of the laws of the State of Virginia, and a citizen of the State of Virginia, residing at Portsmouth in said State, files with its said petition for appeal this its assignment of errors.

It says that the District Court of the United States for the Northern District of Georgia, Northern Division thereof, the Honorable William T. Newman, the Judge therein, presiding, in entering its decree in said cause on the 7th day of June, 1913, erred in the following decisions, decrees and particulars, to-wit:

1. In deciding and decreeing that complainant, the Sea-

board Air Line Railway Company, was not entitled to a decree, setting aside and permanently enjoining action under the order of the Railroad Commission of Georgia complained against, which order required complainant to join in making a physical connection between its railroad and that of the Lawrenceville Branch Railroad; the evidence being undisputed that no public interest would be served by such connection, and that the effect of the order of the Railroad Commission of Georgia
92 would be to take complainant's property and business without serving any public purpose, and without any compensation to complainant.

2. In refusing to grant the injunction prayed for and decreeing against complainant, the evidence before the Railroad Commission of Georgia showing no public necessity for a physical connection between complainant's railroad and that of the Lawrenceville Branch Railroad, and showing that such connection was impracticable and not required by the public interest; and complainant having had no hearing before the Commission as to the connection found by the decree to be proper.

3. In decreeing against complainant and in sustaining the order of the Railroad Commission of Georgia requiring complainant to join in making a physical connection with another railroad, there having been no evidence before the Railroad Commission as to a connection other than one found and admitted to be impracticable.

4. In denying an injunction and in not decreeing that the order of the Railroad Commission was void because uncertain and indefinite, in that such order did not fix a particular place for the connection, and did not prescribe definitely who should pay for such connection.

5. In entering a decree denying complainant the relief prayed for and refusing an injunction, and in not setting aside the order of the Railroad Commission of Georgia sought to be set aside in this cause, the evidence showing that the order of the Railroad Commission of Georgia was not within its jurisdiction or power, but related to matters which, under the Constitution and laws of the United States, were within the

exclusive control of the Interstate Commerce Commission of the United States.

6. In not setting aside and in not enjoining the order of the Railroad Commission of Georgia complained of in the bill filed by complainant herein, the evidence showing that such order controled, burdened, interfered with, and affected interstate commerce and the instrumentalities thereof, and was, therefore, beyond the power of the Georgia Commission.

93 7. In not enjoining and annuling the order of the Railroad Commission requiring complainant to make a physical connection with the Lawrenceville Branch Railroad, the evidence showing that such connection would only be used in delivering freight, and that no interchange of traffic would result therefrom.

8. In deciding and decreeing against complainant on evidence not before the Court, and upon the theory, as stated by the Court, that "The public interests may at any time be such as to require the taking of trains over this line, which necessity may arise from various causes which may well be anticipated." Such theory being unsupported by evidence, and the decree against complainant being, therefore, illegal.

9. In hearing the cause de novo, without regard to the evidence before the Commission, and in not limiting the evidence supporting the order of the Georgia Railroad Commission to such evidence as was before the Commission, thereby depriving complainant of due process of law in the decree denying the relief prayed.

10. In entering a decree denying complainant the relief sought, the evidence showing that to make the connection required by the order sought to be enjoined would take the terminal facilities of complainant for the use and benefit of the Lawrenceville Branch Railroad, would cost complainant money, would deprive complainant of its legitimate business, and would in no way benefit complainant.

11. In decreeing ahainst complainant and in not setting aside the order of the Railroad Commission of Georgia, the

evidence showing and the Court finding, that no benefit would accrue to complainant from the connection sought to be made by such order, and the evidence further showing that to comply with the order would result in present cost and future loss to complainant.

12. In not entering a decree annuling the order of the Railroad Commission of Georgia describing the complainant, the evidence showing that said Commission had no legal right, power or jurisdiction to enter such other.

13. In not entering a decree setting aside the order complained against in the bill of complaint, the evidence showing that such order was unreasonable, unjust and oppressive.

94 14. In not decreeing the order of the Georgia Railroad Commission void, the evidence showing that the evidence claimed to show a necessity for a connection was evidence relating to shipments in interstate commerce.

Wherefore, in order that the foregoing assignment of errors may be and appear of record, petitioner for appeal herein presents the same to the Court and prays that such adjudication be made thereof as in accordance with the law and the statutes of the United States in such cases made and provided; and further prays that said final decree of June 7th, 1913, in the District Court of the United States for the Northern District of Georgia, Northern Division thereof, be, as to all of said decree, reversed and annuled, and that said District Court be directed to enter a decree in favor of petitioner, enjoining and annulling the order of the Railroad Commission of Georgia.

W. G. LOVING,
EDGAR WATKINS,
Solicitors for Petitioner, Seaboard Air Line Railway.

WATKINS & LATIMER,
Of Counsel.

Filed in Clerk's Office, 19th day of July, 1913.
O. C. FULLER, Clerk.
By J. D. STEWARD,
Deputy Clerk.

95 APPEAL BOND.

In the United States District Court for the Northern Division of the Northern District of Georgia.

Holding Sessions at Atlanta.

Seaboard Air Line Railway
vs. In equity.
Railroad Commission of Georgia, Charles Murphey Candler, George Hillyer, Joseph F. Gray, Paul B. Trammel, James A. Perry, Campbell Wallace and James K. Hines.

Know All Men By These Presents:

That we, Seaboard Air Line Railway, as principal, and as sureties, are held and firmly bound unto Railroad Commission of Georgia, Charles Murphey Candler, George Hillyer, Joseph F. Gray, Paul B. Trammel, James A. Perry, Campbell Wallace and James K. Hines, in the full and just sum of three hundred ($300.00) dollars, to be paid to the said Railroad Commission of Georgia, Charles Murphey Candler, George Hillyer, Joseph F. Gray, Paul B. Trammel, James A. Perry, Campbell Wallace and James K. Hines, their successors, attorneys, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally by these presents. Sealed with our seals and dated this 19th day of July, 1913.

Whereas, lately at a District Court of the United States for the Northern District of Georgia, in a suit depending in said Court, Seaboard Air Line Railway, complainant, and Railroad Commission of Georgia, Charles Murphey Candler, George Hillyer, Joseph F. Gray, Paul B. Trammel, James A. Perry, Campbell Wallace and James K. Hines, defendants, a decree was rendered against the said Seaboard Air Line Railway,

96 and the said Seaboard Air Line Railway having obtained and appeal and filed a copy thereof in the clerk's office of the said Court to reverse the decree in the aforesaid suit, and a citation directed to the said Railroad Commission of Georgia, Charles Murphey Candler, George Hillyer, Joseph F. Gray, Paul B. Trammel, James A. Perry, Campbell Wallace and James K. Hines, citing and admonishing them to be and appear at a session of the United States Circuit Court

of Appeals for the Fifth Circuit to be holden at the City of Atlanta on the 6th day of October, next.

Now, the condition of the above obligation is such, that if the said Seaboard Air Line Railway shall prosecute its appeal to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

SEABOARD AIR LINE RAILWAY,
By W. G. LOVING,
Its Attorney of Record and of Counsel.
W. G. LOVING.
FIDELITY AND DEPOSIT CO. OF MD.
By G. ARTHUR HOWELL,
Aght. & Atty. in Fact. (Seal)
Sureties.

Sealed and delivered in the presence of witnesses:
RUSSELL G. TURNER.
ERNEST NULLING.

Approved:

WM. T. NEWMAN,
U. S. District Judge.

Filed in Clerk's Office, 19th day of July, 1913.
O. C. FULLER, Clerk.
By J. D. STEWARD, Deputy.

98 STIPULATION OF COUNSEL AS TO TRANSCRIPT.

In the United States District Court for the Northern Division of the Northern District of Georgia.

Holding Sessions at Atlanta.

Seaboard Air Line Railway
vs. In equity.
Railroad Commission of Georgia, Charles Murphey Candler, George Hillyer, Joseph F. Gray, Paul B. Trammel, James A. Perry, Campbell Wallace and James K. Hines.

Seaboard Air Line Railway, defendant below, having filed its appeal, assignment of errors and bond in this case, it is hereby stipulated:

1.

This stipulation shall be in lieu of the praecipe required by paragraph A of Rule 75 of the Federal Equity Rules, and shall constitute such praecipe.

2.

Appellant having agreed thereto, it is stipulated that the record shall be made out by the Clerk of the United States District Court and transmitted to the clerk of the appellate court, to be by such latter named clerk printed under his supervision and under the rules of the Circuit Court of Appeals, appellant declining to take advantage of the Act of February 15, 1911.

3.

It is agreed that the portions of the record to be incorporated in the transcript on this appeal shall be as follows:

(a) The original bill filed by the Seaboard Air Line Railway, together with all exhibits thereto.

(b) The original answer of the defendants herein.

(c) Condensed form of evidence, with the stipulation and order thereon.

(d) The opinion of the Judge of the United States District Court in this cause.

99 (e) The final decree of the Court entered in this cause.

(f) Petition of the Seaboard Air Line Railway for appeal.

(g) Order allowing appeal.

(h) Waiver of citation on appeal.

(i) Assignment of errors.

(j) Bond on appeal, which bond need not be printed.

(k) This stipulation, which need not be printed.

4.

It is further stipulated and agreed that the above and foregoing constitutes the record necessary and all the record necessary to be incorporated into the transcript on appeal.

Witness the parties hereto this 19th day of July, 1913.

SEABOARD AIR LINE RAILWAY, Appellant.
By EDGAR WATKINS & W. G. LOVING,
Its Solicitors.
RAILROAD COMMISSION OF GEORGIA.
CHARLES MURPHEY CANDLER.
GEORGE HILLYER.
JOSEPH F. GRAY,
PAUL B. TRAMMEL.
JAMES A. PERRY.
CAMPBELL WALLACE.
JAMES K. HINES, Appellees.
By JAMES K. HINES,
Their Solicitor.

Filed in Clerk's Office, 19th day of July, 1913.
O. C. FULLER, Clerk.
By J. D. STEWARD, Deputy.

100 ORDER OF COURT.

The above stipulation approved, and it is ordered that the designation of the parts of the record herein contained correctly and properly designates the portion of the record necessary, and all the record that is necessary to be incorporated in the transcript on the appeal in this cause.

This 19 day of July, 1913.

WM. T. NEWMAN,
United States District Judge.

Filed in Clerk's Office, 19 day of July, 1913.
O. C. FULLER, Clerk.
By J. D. STEWARD, Deputy.

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101 CLERK'S CERTIFICATE.

United States of America,
Northern District of Georgia,
Northern Division.

I, OLIN C. FULLER, Clerk of the District Court of the United States for the Northern District of Georgia, do hereby certify that the foregoing and attached 100 pages of printing and writing contains a true, full, correct and complete copy of the original record, assignment of errors and all proceedings had in the case of Seaboard Air Line Railway, Appellant, and Railroad Commission of Georgia, et al., Appellees, as fully as the same remains of record and on file in my office at Atlanta, Georgia, and as stipulated by counsel, except that the original "Stipulation and Agreement Waiving Citation and Service Thereof," is included therein instead of a copy thereof, and the original three (3) blue-prints showing proposed connection with Lawrenceville Branch R. R. and identified as Plans No. 1, 2 and 3 are included therein in the stead of a copy thereof as directed by order of Court.

In testimony whereof I hereunto set my hand and the seal of said District Court at Atlanta, Ga., this the 8th day of August, A. D., 1913.

OLIN C. FULLER,
Clerk U. S. District Court for the
Northern District of Georgia.

[Seal]

That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

Argument and Submission.

Extract from the Minutes of October 14th, 1913.

No. 2551.

SEABOARD AIR LINE RAILWAY
versus
RAILROAD COMMISSION OF GEORGIA et al.

On this day this cause was called, and, after argument by Edgar Watkins, Esq., and W. G. Loving, Esq., for Appellant, and James K. Hines, Esq., for Appellees, was submitted to the Court.

Opinion of the Court.

Filed March 10, 1914.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 2551.

SEABOARD AIR LINE RAILWAY, Appellant,
versus
RAILROAD COMMISSION OF GEORGIA et al., Appellees.

Appeal from the District Court of the United States for the Northern District of Georgia.

Edgar Watkins (W. G. Loving, on the brief), for appellant.
James K. Hines, for appellees.

Before Pardee and Shelby, Circuit Judges, and Foster, District Judge.

Memorandum Opinion by Direction of the Court.

By SHELBY, *Circuit Judge:*

This is a bill in equity by the Seaboard Air Line Railway, a Virginia corporation, against the Railroad Commission of Georgia, the five members of the Commission, and its secretary and special attorney, all citizens of the State of Georgia.

The purpose of the bill is to enjoin and annul an order of the Railroad Commission of Georgia requiring the Lawrenceville Branch Railroad Company and the Seaboard Air Line Railway to provide

and maintain at Lawrenceville, Georgia, physical connection between said railways and sufficient and necessary track or tracks to take care of freight traffic moving between said roads. It is alleged in the bill that the Railroad Commission of Georgia has no power or right "to control, burden, or interfere with interstate commerce;" that the order "is unconstitutional and void, without the authority of said Commission, and contrary to the Constitution and laws of the United States;" that it "is illegal and deprives complainant of its property without due process of law and denies to the complainant the equal protection of the laws;" and that it is contrary to the Constitution and laws of the State of Georgia. It is alleged that the defendants intend to begin proceedings to enforce the order, and there is a prayer for a decree to restrain them from doing so; and a further prayer for an injunction, after final hearing, enjoining the defendants and their agents, employees and attorneys from taking any steps to enforce the order of the Commission, and that the same be declared void. The defendants answered the bill, maintaining the validity of the Commission's order, and denying that the same was in conflict with the Constitution of the United States.

The bill was presented to the judge of the District Court, who made an order that the defendants "show cause, if any they have, before me * * * why the injunction should not be issued as prayed." Afterwards, the case came on for final hearing on the pleadings and evidence, and a final decree was entered denying the injunction and dismissing the bill. From that decree the complainant appeals and assigns the decree as error.

The allegations of the bill are such as would require the judge to whom it was presented to call to sit with him two other judges to decide whether or not an interlocutory injunction should issue; Louisville & Nashville R. R. Co. v. Railroad Commission of Alabama, 208 Fed. 35; and it would have been error for the district court held by one judge to have ordered or to have refused to order an interlocutory injunction. Judicial Code, § 266; Ex parte Metropolitan Water Co., 220 U. S. 539. But the record does not show that an interlocutory injunction was either granted or refused. The case was set down for hearing by an order for the defendants to show cause on January 25, 1913, why an injunction should not issue; but there seems to have been no order whatever as to an interlocutory injunction, and that no hearing was had on the question of the issuance of an interlocutory injunction. The only other order in the record is the final decree on pleadings and evidence refusing the injunction, dismissing the bill, and taxing the complainant with the costs, from which decree this appeal is taken.

There is no requirement in the Judicial Code, § 266, that three judges should hear the case when submitted for final decree on the pleadings and evidence. The three judges are only required to pass on the question of granting the interlocutory injunction; and if the complainant waives his prayer for an injunction pendente lite and goes to trial on the merits, having taken evidence for that purpose, and no objection is made by either party to that course,

we see no reason why one judge may not proceed to try and decide the case.

On the merits of the case, a majority of the judges concur in the opinion of the district judge which appears in the record and is reported in 206 Fed. 181. The final decree refusing the injunction and dismissing the bill is

Affirmed.

Judgment.

Extract from the Minutes of March 10, 1914.

No. 2551.

SEABOARD AIR LINE RAILWAY
versus
RAILROAD COMMISSION OF GEORGIA et al.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Georgia, and was argued by counsel;

On Consideration Whereof, It is now here ordered, adjudged and decreed by this Court, that the final decree of the said District Court in this cause refusing the injunction and dismissing the bill, be, and the same is hereby, affirmed;

It is further ordered, adjudged and decreed that the appellant, Seaboard Air Line Railway, and the surety on the appeal bond herein, Fidelity & Deposit Company of Maryland, be condemned, in solido, to pay the costs of this cause in this Court, for which execution may be issued out of said District Court.

Petition for Appeal and Order Allowing Same.

Filed May 16th, 1914.

In the United States Circuit Court of Appeals for the Fifth Circuit.

In Equity.

No. 2551.

SEABOARD AIR LINE RAILWAY, Appellant,
versus
RAILROAD COMMISSION OF GEORGIA, CHARLES MURPHY CANDLER, George Hillyer, Joseph F. Gray, Paul B. Trammel, James A. Perry, Campbell Wallace, and James K. Hines, Appellees.

To the Honorable United States Circuit Court of Appeals for the Fifth Circuit, the Honorable Don A. Pardee, Presiding Judge of said Court:

Now comes the appellant by its solicitor and complains that in the record and proceedings, and also in the rendition of the decree

of the United States Circuit Court of Appeals for the Fifth Circuit, sitting at New Orleans, in the State of Louisiana, in the above styled cause, on the 10th day of March, A. D. 1914, affirming the decree of the United States District Court for the Northern Division of the Northern District of Georgia in said cause, manifest error has intervened to the great damage of the petitioner; that the jurisdiction of the District Court of the United States for the Northern District of Georgia depended upon the fact that the appellant herein, complainant in the District Court and appellant in the Circuit Court of Appeals, brought its complaint alleging and claiming that it had been deprived of rights under the Constitution and laws of the United States, and the jurisdiction was not dependant on diversity of citizenship entirely but the cause involved questions in which the judgment of the Circuit Court of Appeals is not made final by the laws of the United States; that the amount involved therein and the matter in controversy exceeds the sum of one thousand dollars besides costs, and this is not a case in which the jurisdiction of the Circuit Court of Appeals is made final.

Wherefore, petitioner prays for an allowance of the appeal to the end that the cause may be carried to the Supreme Court of the United States, and petitioner prays for a supersedeas of said judgment and such other process as is required to perfect the appeal prayed for, to the end that the error therein may be corrected.

(Signed) W. CARROLL LATIMER,
Fourth Nat'l Bank Bldg., Atlanta;
W. G. LOVING,
Fourth National Bank Bldg., Atlanta;
EDGAR WATKINS,
1319 *F St. N. W., Washington, D. C.,*
Solicitors for Appellant Seaboard Air Line Railway.

WATKINS & LATIMER,
Solicitors and of Counsel, Atlanta, Georgia.

Appeal allowed, and bond fixed in the sum of One thousand dollars, conditioned as the law directs, this the 14th day of May, 1914.

(Signed) DON A. PARDEE,
United States Circuit Judge.

Assignment of Errors.

Filed May 16th, 1914.

In the United States Circuit Court of Appeals for the Fifth Circuit.

In Equity.

No. 2551.

SEABOARD AIR LINE RAILWAY, Appellant,
versus
RAILROAD COMMISSION OF GEORGIA, CHARLES MURPHEY CANDLER, George Hillyer, Joseph F. Gray, Paul B. Trammel, James A. Perry, Campbell Wallace, and James K. Hines, Appellees.

And now at the time of filing its petition for appeal in the above styled cause, Seaboard Air Line Railway, complainant in the original bill in the District Court and appellant in the Circuit Court of Appeals and appellant here for said appeal, a corporation under and by virtue of the laws of the State of Virginia and a citizen of the State of Virginia, residing at Portsmouth in said State, files with its said petition for appeal this its assignment of errors.

It says that the United States Circuit Court of Appeals for the Fifth Circuit, the Honorable Don A. Pardee, the Honorable David D. Shelby, the Honorable Rufus E. Foster, (District Judge), Judges therein presiding, in entering its decree in said cause on the 10th day of March, 1914, erred in the following decisions, decrees and particulars, to wit:

1. In not reversing the District Court in deciding and decreeing that appellant, the Seaboard Air Line Railway Company, was not entitled to a decree setting aside and permanently enjoining action under the order of the Railroad Commission of Georgia complained against, which order required appellant to join in making a physical connection between its railroad and that of the Lawrenceville Branch Railroad; the evidence being undisputed that no public interest would be served by such connection and that the effect of the order of the Railroad Commission of Georgia would be to take applicant's property and business without serving any public purpose and without any compensation to appellant.

2. In not reversing the District Court for refusing to grant the injunction prayed for and for decreeing against appellant, the evidence before the Railroad Commission of Georgia showing no public necessity for a physical connection between appellant's railroad and that of the Lawrenceville Branch Railroad, and showing that such connection was impracticable and not required by the public interests; and appellant having had no hearing before the Railroad Commission of Georgia as to the connection found by the decree to be proper.

3. In not reversing the judgment and decree of the United States

District Court for the Northern District of Georgia, for that said District Court erred in decreeing against appellant and in sustaining the order of the Railroad Commission of Georgia requiring appellant to join in making the physical connection with another railroad, there having been no evidence before the Railroad Commission of Georgia as to a connection other than one found and admitted to be impracticable; and the Circuit Court of Appeals erred in affirming the judgment and decree of said District Court.

4. Because appellant was entitled to a judgment and decree reversing that of the said District Court and directing that an injunction should issue in favor of appellant, the evidence showing that the order of the Railroad Commission of Georgia was not within its jurisdiction or power, but related to matters which, under the Constitution and laws of the United States, were within the exclusive control of the Interstate Commerce Commission of the United States.

5. Because appellant was entitled to a judgment and decree reversing that of the said District Court and directing that an injunction should issue in favor of appellant, the evidence showing that the order of the Railroad Commission of Georgia sought to be set aside by complainant below, appellant here, controlled, burdened, interfered with and affected interstate commerce and the instrumentalities thereof and was, therefore, beyond the power of the Railroad Commission of Gorgia.

6. Because appellant was entitled to a judgment and decree reversing that of the District Court and directing that an injunction should issue in favor of appellant, the evidence showing that the physical connection required by the order of the Railroad Commission of Georgia, which order was sought to be enjoined by appellant, would only be used to accommodate and benefit a certain class of shippers at Lawrenceville in the delivery of their freight and to save cost of drayage to such shippers, and that no interchange of traffic would result therefrom.

7. Because the Honorable Circuit Court of Appeals erred in not reversing the decree of the trial court, the opinion and decree of the trial Judge being based upon considerations not in evidence but, as stated by the learned trial Judge, upon anticipated public interests.

8. Because the trial Judge erred in acting on evidence, to sustain the order of the Railroad Commission of Georgia directing appellant to make a physical connection with another railroad, that was not before the Railroad Commission of Georgia at or prior to the time it made such order.

9. Because the opinion and decree of the Honorable Circuit Court of Appeals deprives this appellant of the due process of law guaranteed to it under the Constitution and laws of the United States, for that such opinion sanctions the decree of the United States District Court refusing to enjoin an order of the Railroad Commission of Georgia, which order was not supported by any evidence before the Railroad Commission.

10. Because the court disregards the fact that the order sought to be enjoined would take the terminal facilities of appellant for

the benefit and use of the Lawrenceville Branch Railroad, would cost the appellant money, would deprive appellant of its legitimate business and would in no way benefit appellant. Said Lawrenceville Branch Railroad being nothing but a spur or tap line of only eleven miles length, without equipment, without a side track, depot, or telegraph office between its terminals to encourage or accommodate any reciprocal relations with a trunk line, such as appellant's, in exchange of business.

11. Because the court disregarded the fact that no benefit would accrue to appellant from the connection sought to be made by the order of the Railroad Commission of Georgia, and the evidence further showing that to comply with the order would result in present cost and future loss to appellant.

12. Because the court erred in not reversing the decree of the District Court and in not directing that an injunction should be issued in favor of appellant, complainant below, the evidence showing that the Railroad Commission of Georgia issuing the order sought to have been enjoined had no legal right, power or jurisdiction to enter such order.

13. Because the court erred in not reversing the District Court for not entering a decree setting aside the order complained against in the bill of complaint, the evidence showing that such order was unreasonable, unjust and oppressive.

Wherefore, the appellant prays the Honorable Court to examine and correct the errors assigned, and for a reversal of the decree of the United States Circuit Court of Appeals for the Fifth Circuit entered in the above entitled case.

(Signed) W. CARROLL LATIMER,
Fourth Nat'l Bank Bldg., Atlanta;
W. G. LOVING,
Fourth Nat'l Bank Bldg., Atlanta;
EDGAR WATKINS,
1319 *F St. N. W., Washington, D. C.,*
Solicitors for Appellant, Seaboard Air Line Railway.

WATKINS & LATIMER,
Solicitors and of Counsel, Atlanta, Georgia.

Bond on App al.

Filed May 16th, 1914.

In the United States Circuit Court of Appeals for the Fifth Circuit

In Equity.

No. 2551.

SEABOARD AIR LINE RAILWAY, Appellant,
versus
RAILROAD COMMISSION OF GEORGIA, CHARLES MURPHEY CANDLER, George Hillyer, Joseph F. Gray, Paul B. Trammel, James A. Perry, Campbell Wallace, and James K. Hines, Appellees.

Know all men by these presents:

That we, Seaboard Air Line Railway, as principal, and Fidelity & Deposit Company of Maryland, as surety, are held and firmly bound unto Railroad Commission of Georgia, Charles Murphey Candler, George Hillyer, Joseph F. Gray, Paul B. Trammel, James A. Perry, Campbell Wallace and James K. Hines, in the full and just sum of One Thousand ($1,000.00) Dollars, to be paid to the said Railroad Commission of Georgia, Charles Murphey Candler, George Hillyer, Joseph F. Gray, Paul B. Trammel, James A. Perry, Campbell Wallace and James K. Hines, their successors, attorneys, executors, administrators or assigns, to which payment well and truly to be made we bind ourselves, our successors and assigns, jointly and severally, by these presents. Sealed with our seals and dated this 14th day of May, 1914.

Whereas, lately at a District Court of the United States for the Northern District of Georgia, in a suit pending in said Court between Seaboard Air Line Railway, complainant, and Railroad Commission of Georgia, Charles Murphey Candler, George Hillyer, Joseph F. Gray, Paul B. Trammel, James A. Perry, Campbell Wallace and James K. Hines, defendants, a decree was rendered against the said Seaboard Air Line Railway, and the said Seaboard Air Line Railway having obtained an appeal to the United States Circuit Court of Appeals for the Fifth Circuit to reverse the decree in the aforesaid suit, and said Circuit Court of Appeals having affirmed said judgment and decree rendered in said District Court of the United States for the Northern District of Georgia, and the said Seaboard Air Line Railway having obtained an appeal, and filed a copy thereof in the Clerk's Office of the said United States Circuit Court of Appeals for the Fifth Circuit, to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to the said Railroad Commission of Georgia, Charles Murphey Candler, George Hillyer, Joseph F. Gray, Paul B. Trammel, James A. Perry, Campbell Wallace and James K. Hines, citing and admonishing them to be and appear at a session of the Supreme Court of the

United States to be holden in the City of Washington, District of Columbia, within thirty days.

Now, the condition of the above obligation is such, that if the said Seaboard Air Line Railway shall prosecute its appeal to effect, and answer all damages and costs if it fails to make its plea good, then the above obligation to be void, else to remain in full force and virtue.

SEABOARD AIR LINE RAILWAY,
(Signed) By W. G. LOVING,
Its Attorney of Record and of Counsel.
FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
(Signed) By EDWIN R. HALL, [SEAL.]
Agent and Attorney in Fact.

Sealed and delivered in the presence of witnesses:
(Signed) RUFUS C. BASS.
RUSSELL G. TURNER.

Approved:
(Signed) DON A. PARDEE,
United States Circuit Judge.

Order to Transmit Exhibits in the Original.

Filed May 23d, 1914.

In the United States Circuit Court of Appeals for the Fifth Circuit.

In Equity.

No. 2551.

SEABOARD AIR LINE RAILWAY, Appellant,
versus
RAILROAD COMMISSION OF GEORGIA, CHARLES MURPHEY CANDLER, George Hillyer, Joseph F. Gray, Paul B. Trammel, James A. Perry, Campbell Wallace, and James K. Hines, Appellees.

As part of the record transmitted to this Court were three original exhibits consisting of blue prints, identified as Plans No. 1, 2 and 3, as appears by the certificate of the Clerk of the United States District Court to the transcript.

The Clerk of this Court is hereby ordered and directed to transmit the same to the Clerk of the Supreme Court of the United States in the original, as a part of the record in this case.

This 21st day of May, 1914.
(Signed) DON A. PARDEE,
Judge United States Circuit Court of Appeals.

Clerk's Certificate.

UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Circuit.

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 105 to 129 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 2551, wherein Seaboard Air Line Railway is appellant, and Railroad Commission of Georgia, et al., are appellees, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 104 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

I further certify that the three (3) exhibits, consisting of blue prints numbered Plan No. 1, Plan No. 2, and Plan No. 3, forwarded to this Court in the original, are ordered to be transmitted to the Supreme Court of the United States in the original, as per order copied at page 128 of this record.

In testimony whereof I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 25th day of May, A. D. 1914.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,
Clerk U. S. Circuit Court of Appeals, Fifth Circuit,
By GEORGE W. ROBERTSON,
Deputy Clerk.

THE UNITED STATES OF AMERICA:

The President of the United States to Railroad Commission of Georgia, Charles Murphey Candler, George Hillyer, Joseph F. Gray, Paul B. Trammel, James A. Perry, Campbell Wallace, James K. Hines, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, D. C., within 30 days from the date hereof, pursuant to an appeal and order of appeal sued out and filed in the Clerk's Office of the United States Circuit Court of Appeals for the Fifth Circuit, on the 14th day of May, 1914, in the cause wherein Seaboard Air Line Railway is appellant in the United States Circuit Court of Appeals in and for the Fifth Circuit in the Northern Division of the Northern District of Georgia, and Railroad Commission of Georgia, Charles Murphey

Candler, George Hillyer, Joseph F. Gray, Paul B. Trammel, James A. Perry, Campbell Wallace and James K. Hines are appellees, No. 2551, In Equity, to show cause, if any there be, why the decree rendered against the said Seaboard Air Line Railway on March 10th, 1914, and in said order of appeal and appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward Douglass White, Chief Justice of the United States, this 14th day of May, in the year of our Lord one thousand nine hundred and fourteen.

May 14th, 1914.

DON A. PARDEE,
United States Circuit Judge.

Due and legal service and copy of the within citation are hereby acknowledged this May 14th, 1914.

JAMES K. HINES,
Attorney for Railroad Commission of Georgia et al., Atlanta, Ga.

[Endorsed:] No. 2551. United States Circuit Court of Appeals. Seaboard Air Line Railway vs. Railroad Commission of Georgia et al. Citation. U. S. Circuit Court of Appeals. Filed May 16, 1914. Frank H. Mortimer, clerk. Watkins & Latimer, Lawyers, 1501-1505 Fourth Nat'l Bank Bldg., Atlanta, Georgia.

Endorsed on cover: File No. 24,251. U. S. Circuit Court Appeals, 5th Circuit. Term No. 510. Seaboard Air Line Railway, appellant, vs. Railroad Commission of Georgia et al. Filed June 3d, 1914. File No. 24,251.

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No. 510

Supreme Court of the United States

OCTOBER TERM, 1914

SEABOARD AIRLINE RAILWAY, *Appellant*
vs.
RAILROAD COMMISSION OF GEORGIA, et. al. *Appellees*

Appeal from the United States Circuit Court of Appeals for the Fifth Circuit.

Brief and Argument for Appellant

STATEMENT OF THE CASE.

The complaint in this case was brought by the Appellant, Seaboard Air Line Railway, a corporation of the State of Virginia, with lines extending in and through the States of Virginia, North Carolina, South Carolina, Georgia, Alabama and Florida, against the Railroad Commission of Georgia, C. Murphey Candler, George Hillyer, Joseph F. Gray, Paul B. Trammel and James A. Perry, the members of said Commission; Campbell Wallace and James K. Hines, Secretary and Special Attorney, respectively, of said Commission; all residents of the State of Georgia.

The purpose of the complaint was to enjoin and annul an order of the Railroad Commission of Georgia. The issue here involved can be better understood by stating the proceedings chronologically.

Upon the petition of certain citizens of Lawrenceville, Georgia, the Railroad Commission, after notice and hearing to Appellant and the Lawrenceville Branch Railroad Company, on August 1st, 1912, ordered:

> "Upon consideration of the record in the above entitled matter, and of the evidence and argument submitted at the hearings had thereon, the Commission is of the opinion that physical connection between the Lawrenceville Branch Railroad and the Seaboard Air Line Railway should be provided and maintained at Lawrenceville, Georgia, and it is therefore—
>
> "ORDERED: That the Lawrenceville Branch Railroad Company and the Seaboard Air Line Railway shall, within thirty days from this date, file with the Commission blue prints showing detailed plans for making at Lawrenceville, Georgia, physical connection between said railways, and maintaining sufficient and necessary interchange track or tracks to take cars of freight traffic moving between said roads.
>
> "ORDERED FURTHER: That the Lawrenceville Branch Railroad Company and the Seaboard Air Line Railway shall also file with the Commission, within thirty days from this date, detailed estimates of cost of providing such physical connection and interchange track or tracks as indicated in the preceding paragraph of this order." (Rec. 2)

The Lawrenceville Branch Railroad filed a blue print showing its plan, and the Seaboard likewise presented a plan. These are called plans one and two, and are sent up with the record for the information of the Court.

Plan one, that of the Lawrenceville Branch, was claimed to be impracticable, and plan two, that of the Seaboard, too expensive.

The District Judge rejected both of these plans and adopted a third plan, hereinafter mentioned.

After the first two plans were presented, and with no other plan before it, the Commission, on September 11th, 1912, passed this order:

"Upon consideration of the record in the above entitled matter, and of the evidence and argument submitted at the hearings had thereon, and the Commission being of the opinion that the making and maintaining at Lawrenceville, Georgia, of physical connection between the Lawrenceville Branch Railroad Company and the Seaboard Air Line Railway is practicable and to the interest of the public, it is

"ORDERED: That the Lawrenceville Branch Railroad Company and the Seaboard Air Line Railway shall, within four months from this date, provide and maintain at Lawrenceville, Georgia, physical connection between said railways, and sufficient and necessary **interchange track or tracks** to take care of **freight traffic moving between said roads.**

"The Commission is of the opinion, and hereby so expresses itself, that the expense incident to the provision and maintenance of this physical connection should be borne equally by the two railroad companies named herein.

"ORDERED FURTHER: That the Lawrenceville Branch Railroad Company and the Seaboard Air Line Railway each make report to this Commission, within thirty days from this date, showing its actions and doings in pursuance of this order." (Rec. 3)

After this order was passed, a third plan was presented to the Seaboard by the Lawrenceville Branch—or rather by the Southern Railway, which controls the Lawrenceville Branch—and by the engineer of the Seaboard changed to make it more practicable. This plan, known as plan No. 3, was sent up and is before the Court, and was the one that, in the opinion of the District Judge, should be adopted, though no hearing on the practicability of the plan was ever had before the Commission, nor has the Commission found who, if any one, should pay for the rights of way necessary to carry out the plan.

The Seaboard filed its bill of complaint, averring these facts, and claiming the order of the Commission was null and void. Answer was filed by Appellees, and the case came on for final hearing before His Honor, Judge Wm. T. New-

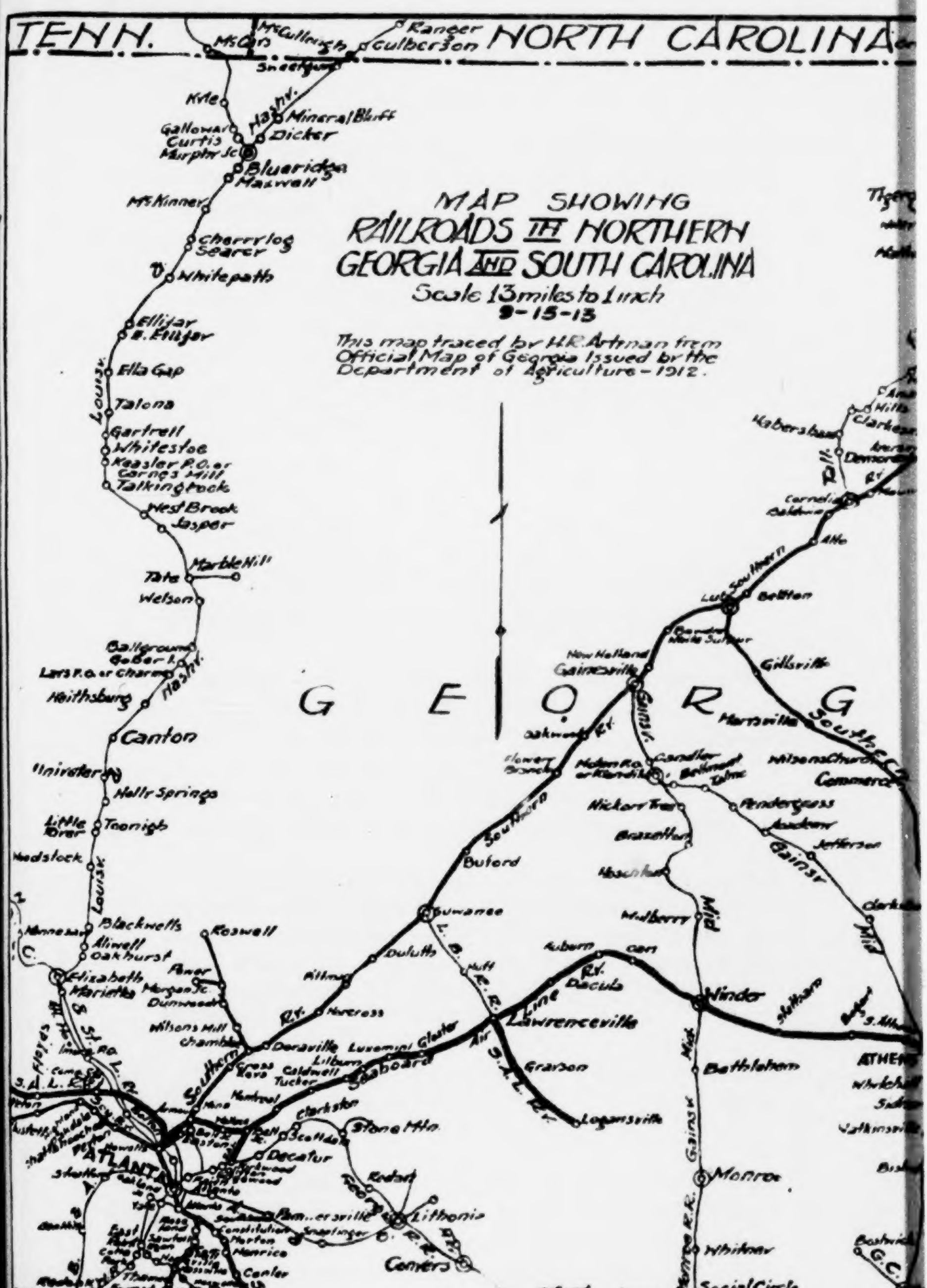
man, who heard testimony and rendered a decree, denying all the relief prayed for (Rec. 50). The opinion of Judge Newman is in the record, pp. 47-49.

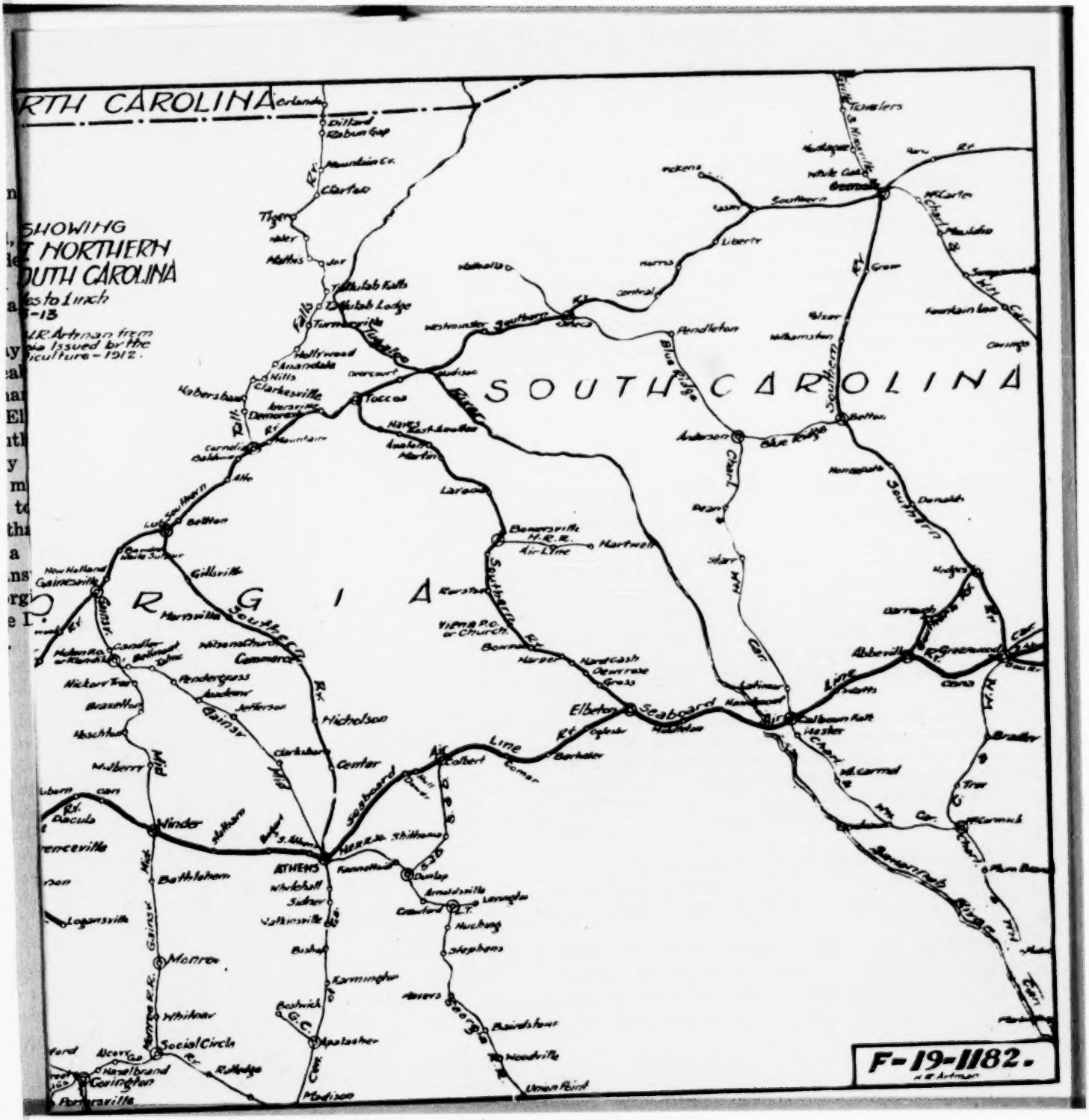
The pleadings and evidence disclose that the Seaboard Air Line Railway owns and operates lines of railway through Virginia, North Carolina, South Carolina, Georgia, Florida and Alabama.

The Southern Railway is a competing line, in a general way, paralleling the Seaboard from Washington, D. C., to Atlanta, Ga., Birmingham, Ala., and other points. There are connections from Elberton, Athens and Winder from the Seaboard to the Southern, and the Lawrenceville Branch Railroad, controlled by the Southern Railway company, has a line about eleven miles long extending from Lawrenceville, on the Seaboard, to Suwanee, on the Southern. It is with this branch road that a connection has been ordered.

The Seaboard has a branch running eastwardly from Lawrenceville to Logansville.

The situation in Georgia is shown by a section taken from a map prepared by the Department of Agriculture of Georgia and here inserted.


MAP SHOWING
RAILROADS IN NORTHERN
GEORGIA AND SOUTH CAROLINA
Scale 13 miles to 1 inch
9-15-13
This map traced by H.R. Artman from
Official Map of Georgia Issued by the
Department of Agriculture - 1912.
TENN.
NORTH CAROLINA
G E O R G
Ranger
Culberson
Mineral Bluff
Dicker
Blueridge
Maswell
Cherrylog
Searcy
Whitepath
Ellijay
E. Ellijay
Ella Gap
Talona
Gartrell
Whitestone
Keasler P.O. or Carnes Mill
Talking Rock
West Brook
Jasper
Marble Hill
Tate
Nelson
Keithsburg
Canton
Little River
Woodstock
Blackwells
Oakhurst
Elizabeth
Marietta
Roswell
Norcross
Duluth
Suwanee
Buford
Gainesville
New Holland
Bellton
Gillsville
Commerce
Pendergrass
Jefferson
Winder
Lawrenceville
Grayson
Loganville
Bethlehem
Monroe
Social Circle
Covington
Conyers
Lithonia
Stone Mtn.
Decatur
Clarkston
Doraville
ATLANTA
ATHENS
Union City
Stockbridge
Rex
Southern
Seaboard
Air Line Ry.
Gainsv. Mid.


RTH CAROLINA
SHOWING
T NORTHERN
OUTH CAROLINA
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5-13
J.R. Artman from
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riculture - 1912.
SOUTH CAROLINA
G I A
ATHENS
F-19-1182.

An appeal was taken to the Circuit Court of Appeals where, by a divided opinion the decree of the District Court was affirmed. (Rec. 105.)

Appellant insists, as will hereinafter be discussed, that the trial court should have determined the questions presented from the testimony before the Railroad Commission of Georgia, but, that a full view of the case may be obtained, we present a statement of undisputed conclusions of fact which arise on the testimony adduced before the trial court These are:

A.

THE PHYSICAL CONNECTION SOUGHT WOULD ACCOMMODATE A TERMINAL SERVICE ONLY.

C. S. Strong, a witness for Appellees, defendants below, desired the connection that he might move coal and raw materials via the Southern Railway and the Lawrenceville Branch to a connection with the Seaboard, which latter road would do no more than switch the cars to the plant of the witness. (Rec. 71, 72, 73). Said the witness:

> "If this physical connection were made and switching were made possible I would get those cars over the Southern and Lawrenceville Branch, and all the Seaboard would get on that would be two dollars on each of the fifteen or sixteen cars. That is all interstate business. * * * (Rec. 74)
>
> * * * If this connection was made and the Seaboard refused to switch cars * * * it would not be any advantage to me then." (Rec. 75)

L. R. Martin, the second witness, desired the connection to save draying. His plant being on the Seaboard he wanted the Seaboard's terminals thrown open to the use of the Lawrenceville Branch or to the Southern. He said:

"The Seaboard would lose that business to the extent I used the connection, and the Seaboard would only get two dollars for the switching business. * * * That would be a constant loss to the Seaboard." (Rec. 77)

D. Y. Hodges, the next witness did say that there was a demand for cotton marketed in Logansville "at points on the Southern, Gainesville, Ga., especially," and that he could not ship to these points "on account of the freight" (Rec. 78). That this testimony does not show that there would be any interchange of freight over the proposed connection is made manifest by the fact that under the Georgia Commission scale of rates, if the connection existed, the rate via the connection from Logansville to Gainesville, a three-line haul, would be 31 cents a hundred pounds and 26 cents by the existing route over a two-line haul via the Seaboard and Gainesville Midland. (Rec. 91).

W. A. Cooper, the next witness for defendants said:

"There is no new business down at Grayson that the Seaboard Air Line would get if this physical connection was put in." (Rec. 80)

This witness did say that he could not sell wood in Atlanta to yards on the tracks of the Southern, but if the physical connection were in, the Seaboard could not be compelled to join in a through route and joint rates to Atlanta with the Lawrenceville Branch and the Southern when it had the shorter line thereto. Even if wood should move over the connection if one was made, the rate via such route to Atlanta would be $13.00 a car against $9.00 over the existing line of the Seaboard. (Rec. 80, 81)

The next witness, A. T. Green, now has industrial tracks from both roads one on each side of his warehouse. He said:

> "Our particular object is to save our making this transfer across our warehouse; that is the way it would affect me. * * * The movement of cotton in Lawrenceville would not be affected if this connection was made." (Rec. 84)

J. L. Exam, the next witness, is located on the track of the Lawrenceville Branch and he desires to save drayage when he ships his product out over the Seaboard. He said:

> "If the Seaboard refused to switch cars over this connecting track it would not be any advantage to us to have the track. The most of our lumber comes from Alabama and Florida. I did ask the Seaboard to put in an industrial track to our plant and they agreed to do it for $466.00." (Rec. 85-86)

S. C. Carter, the last witness for defendant, said:

> "The only benefit we would get on account of the connection being operated would be to save drayage, * * * * If the Lawrenceville Branch Railroad would put in a spur track to our plant, just as the Seaboard has to our plant; it would answer every purpose that I desire." (Rec. 90)

The testimony on behalf of the complainant was confirmatory of that of defendants and showed that a drayage service only was contemplated to result from the proposed connection. The agent at Lawrenceville of appellant testified that there would be no interchange of freight between the two carriers proposed to be connected. (Rec. 59.) To the same effect was the testimony of appellant's soliciting freight agent (Rec. 67) division superintendent (Rec. 68) and chief clerk to the assistant general freight agent. (Rec. 93).

B.

THE PRINCIPAL PURPOSE OF THE PROPOSED CONNECTION IS THE ACCOMMODATION OF INTERSTATE TRANSPORTATION BY FURNISHING A TERMINAL SERVICE THEREFOR.

The witnesses for defendant desired the connection for the following purposes:

C. S. Strong: To enable him to get coal from Virginia and raw material from North and South Carolina. (Rec. 71-73.)

L. R. Martin: To get hull fibre from North and South Carolina and to ship to Selma, Ala., and Greenville, Miss. (Rec. 75-77). This witness gets some material from Atlanta, Ga., but the short line therefrom is over the Seaboard and a connection therefor is unnecessary. (Rec. 75-77.)

D. Y. Hodges: To ship cotton to South Carolina and to Gainesville, Ga. The rate, as shown above, to Gainesville is less by an existing route than it would be over the connection ordered. (This brief, supra. p. 7.)

W. A. Cooper: To have delivered cotton seed shipped intrastate from points on the Southern Railway. (Rec. 79). This witness had had inquiries to sell wood in Atlanta on the track of the Southern, but the rate would make this impossible. (This brief, supra p. 7.)

A. T. Green: To have delivered cotton seed shipped intrastate from points on the Southern Railway. (Rec. 82). This witness said:

> "If this physical connection was made it would not facilitate the shipment of cotton from Lawrenceville." (Rec. 82)

J. L. Exam: To enable him to save drayage on lumber the most of which "comes from Alabama and Florida", though some had been bought in points from which the shipment was intrastate. (Rec. 85).

S. C. Carter: To get coal which is shipped interstate delivered and to ship out to High Point, N. C. (Rec. 89).

The defendants, in the Court below in their answer, say:

"They admit that one of the objects and effects of said physical connection would be to permit interstate freight shipped from other states into Georgia to be switched from the terminus of one or the other of said roads at Lawrenceville to industrial plants in said town. Another object and effect of said physical connection would be to permit freight originating at points on the railway of the Lawrenceville Branch Railroad Company and on the lines of its connecting carriers to be delivered to the complainant for points of destination on its lines of railway. This would likewise be true of freight originating at points or origin on complainant's line, and destined for points of destination on the line of railway of the Lawrenceville Branch Railroad and the lines of its connecting carriers. In the opinion of these defendants, as much, if not more, intrastate freight would move over said physical connection than interstate freight."

C.

NEITHER THE PRACTICABILITY NOR THE REASONABLENESS OF THE PHYSICAL CONNECTION ADOPTED BY THE TRIAL COURT WAS EVER CONSIDERED OR DETERMINED BY THE RAILROAD COMMISSION.

Two plans for the connection were presented to the Commission, a third was prepared after the order involved was entered. (Rec. 53.) On the hearing, counsel for defendants stated that the Commission was satisfied with the third plan and the learned trial judge, reciting that the investigation was **de novo,** seems to have adopted this plan as a guage of the reasonableness of the order, for in the opinion he said:

"I am satisfied from statements of counsel made in the case that the Commission is perfectly satisfied with this connection last named." (Rec. 48)

The trial judge, however, was in error in his statement that such connection could be made for something like

Eighteen Hundred Dollars, the evidence showing that the actual cost of building the connection would amount to $1,800 (Artman Rec. 55), and to that sum must be added the cost of right of way through private property, owned by one Main, valued at $1,500.00, and 700 feet of right of way belonging to the Seaboard, valued at $2,000.00, making the total cost of the connection $5,300.00 (Taylor Rec. 62)

D.

THE ORDER TAKES THE PROPERTY OF APPELLANT WITHOUT ANY COMPENSATION AND FOR THE BENEFIT OF ITS COMPTETITOR AND A FEW INDIVIDUALS.

Mr. Miller, of the Southern Railway and Vice-President of the Lawrenceville Branch Railroad, testified before the Commission:

> "The connection asked for would probably result in a loss to the Seaboard Air Line and an increase to the Lawrenceville Branch Railroad." (Rec. 18)

The Lawrenceville Branch Railroad, or its owner the Southern Railway, can secure the connection without resorting to the State Commission for any order by proceeding under the following sections of the Georgia Code 1910:

Section 2655.

> "Where any railroad in this State joins another at any point along its lines, or where two of such roads have the same terminus, either line, having the same gauge, may, at its own expense, join its tracks by proper and safe switches with the other, should such other road or company refuse to join in the work and expense."

(Section 2658.)

> "Should any railroad company refuse to allow the connecting switches put in its line when requested under Section 2655, it shall and may be lawful for the other road, seeking such connection, to proceed to procure right to use as much of the franchise of the former as may be necessary for such purpose, in the manner pointed out in the charter of the Central Railroad & Banking Company for ascertaining the value of and paying for private property taken for use of said road."

Mr. Taylor, local freight agent of the Seaboard at Lawrenceville, said:

> "If the physical connection is established, and if the freight coming in and going out is deflected by reason of this connection and moves over the Lawrenceville Branch, and thence over the Southern to markets north and east, instead of over the present movement, it will reduce the revenue of the Seaboard 30 or 40 per cent—that is, the Lawrenceville business. The average monthly revenue from the Lawrenceville office will run about five thousand dollars, and this new arrangement, if made, I estimate, would reduce the revenue there 30 or 40 per cent." (Rec. 61)

> "The revenue of the Seaboard Air Line amounts, in my opinion, to about five thousand dollars a month; that includes the passenger revenue, which is about eight hundred to a thousand dollars." (Rec. 65)

Mr. C. S. Strong, testifying for Appellees, said that he would transfer his shipments of coal and tanning materials from the Seaboard to the Lawrenceville Branch if the connection were made; he used about fifteen or sixteen cars of coal each year. (Rec. 71.)

So, L. R. Martin, who shipped 25 or 35 cars of hull fibre a year. (Rec. 75).

S. C. Carter paid freight on sixty cars of coal at $80.00 per car. This traffic the Seaboard would lose and the Lawrenceville Branch Railroad would get if the efforts for the connection prove successful. (Rec. 89).

Against this loss the Seaboard would get some payments for switching if it should be willing to switch another carrier's traffic at a loss.

The cost of this switching service is explained in detail by Mr. Carlton, who says the cost would be "about four dollars where we get two." (Rec. 69).

The Seaboard, of course, does not receive all the freight charges for the shipments above described, a part thereof going in some instances to connecting carriers.

SPECIFICATION OF ERRORS RELIED ON.

1. In not reversing the District Court in deciding and decreeing that appellant, the Seaboard Air Line Railway Company, was not entitled to a decree setting aside and permanently enjoining action under the order of the Railroad Commission of Georgia complained against, which order required appellant to join in making a physical connection between its railroad and that of the Lawrenceville Branch Railroad; the evidence being undisputed that no public interest would be served by such connection and that the effect of the order of the Railroad Commission of Georgia would be to take applicant's property and business without serving any public purpose and without any compensation to appellant.

2. In not reversing the District Court for refusing to grant the injunction prayed for and for decreeing against appellant, the evidence before the Railroad Commission of Georgia showing no public necessity for a physical connection between appellant's railroad and that of the Lawrenceville Branch Railroad, and showing that such connection was impracticable and not required by the public interests, and appellant having had no hearing before the Railroad Commission of Georgia as to the connection found by the decree to be proper.

3. In not reversing the judgment and decree of the United States District Court for the Northern District

of Georgia, for that said District Court erred in decreeing against appellant and in sustaining the order of the Railroad Commission of Georgia requiring appellant to join in making the physical connection with another railroad, there having been no evidence before the Railroad Commission of Georgia as to a connection other than one found and admitted to be impracticable; and the Circuit Court of Appeals erred in affirming the judgment and decree of said District Court.

4. Because appellant was entitled to a judgment and decree reversing that of the said District Court and directing that an injunction should issue in favor of appellent, the evidence showing that the order of the Railroad Commission of Georgia was not within its jurisdiction of power but related to matters which, under the Constitution and laws of the United States, were within the exclusive control of the Interstate Commerce Commission of the United States.

5. Because appellant was entitled to a judgment and decree reversing that of the said District Court and directing that an injunction should issue in favor of appellant, the evidence showing that the order of the Railroad Commission of Georgia sought to be set aside by complainant below, appellant here, controlled, burdened, interfered with and affected interstate commerce and the instrumentalities thereof and was, therefore, beyond the power of the Railroad Commission of Georgia.

6. Because appellant was entitled to a judgment and decree reversing that of the District Court and directing that an injunction should issue in favor of appellant, the evidence showing that the physical connection required by the order of the Railroad Commission of Georgia, which order was sought to be enjoined by appellant, would only be used to accommodate and benefit a certain class of shippers at Lawrenceville in the delivery of their freight and to save cost of drayage to such shippers, and that no interchange of traffic would result therefrom.

7. Because the honorable Circuit Court of Appeals erred in not reversing the decree of the trial court, the opinion and decree of the trial Judge being based upon considerations not in evidence, but as stated by the learned trial judge, upon anticipated public interests.

8. Because the trial Judge erred in acting on evidence, to sustain the order of the Railroad Commission of Georgia directing appellant to make a physical connection with another railroad, that was not before the Railroad Commission of Georgia at or prior to the time it made such order.

9. Because the opinion and decree of the Honorable Circuit Court of Appeals deprives this appellant of the due process of law guaranteed to it under the Constitution and laws of the United States, for that such opinion sanctions the decree of the United States District Court refusing to enjoin an order of the Railroad Commission of Georgia, which order was not supported by any evidence before the Railroad Commission.

10. Because the court disregards the fact that the order sought to be enjoined would take the terminal facilities of appellant for the benefit and use of the Lawrenceville Branch Railroad, would cost the appellant money, would deprive appellant of its legitimate business and would in no way benefit appellant. Said Lawrenceville Branch Railroad being nothing but a spur or tap line of only eleven miles length, without equipment, without a side track, depot, or telegraph office between its terminals to encourage or accommodate any reciprocal relations with a trunk line, such as appellant's, in exchange of business.

11. Because the court disregarded the fact that no benefit would accrue to appellant from the connection sought to be made by the order of the Railroad Commission of Georgia, and the evidence further showing that to comply with the order would result in present cost and future loss to appellant.

12. Because the court erred in not reversing the decree of the District Court and in not directing that an injunction should be issued in favor of appellant, complainant below, the evidence showing that the Railroad Commission of Georgia issuing the order sought to have been enjoined had no legal right, power or jurisdiction to enter such order.

13. Because the court erred in not reversing the District Court for not entering a decree setting aside the order complained against the bill of complaint, the evidence showing that such order was unreasonable, unjust and oppressive.

BRIEF OF ARGUMENT.

We may, for the purpose of this argument, group the specifications of error into propositions as follows:

FIRST.

THE ORDER COMPLAINED OF IS ARBITRARY, UNREASONABLE, AND WITHOUT SUBSTANTIAL EVIDENCE TO SUPPORT IT.

This proposition is based on assignment of errors, paragraphs Nos. 1, 6, 9, and 13.

The pertinent Georgia statute is as follows:

Code 1910. Section 2664.

> "It (the Commission) shall have power and authority, when in its judgment practicable and to the interest of the public, to order and compel the making and operation of physical connection between lines of railroad crossing or intersecting each other, on entering the same incorporated town or city in this State."

The same section gives the Commission power "to compel service to be furnished to manufacturing plants, etc., * * * * * where practicable, and, in the judgment of the Commission, the business is sufficient to justify."

The penalty for disobedience shall not exceed $5,000, and each day is a separate offense. Code 1910, Section 2667.

Agents and employees are liable to criminal prosecution. Code 1910, Section 2668.

The only purpose that can be served by the physical connection required to be made under the order of the Railroad Commission of Georgia, here sought to be set aside, is to furnish a switching service from the terminus of the Lawrenceville Branch Railroad to and from industries on the line of the Seaboard Air Line Railway. This is established by the statement of facts, **supra**, pp. 6 to 8 and can not be successfully contradicted from the record.

Has the Railroad Commission of Georgia the power to order a physical connection for the sole purpose of saving dryage to industries? That no law conferring such power would be valid is held by the Supreme Court in

> Central Stock Yards v. Louisville & N. R. Co., 192 U. S. 568, Sec. 571.

where Mr. Justice Holmes said:

> "The requirement to deliver, transfer and transport freight to any point where there is a physical connection between the tracks of the railroad companies must be taken to refer to cases where the freight is destined to some further point by transportation over a connecting line."

All the witnesses admitted that if the freight traffic of one road is not switched by the other, the connection would be valueless. The Seaboard will not switch at a loss of $2.00 per car either outgoing or incoming freight moving over the Lawrenceville Branch. It cannot be forced to do so.

> In Wadley So. Ry. v. State, 137 Ga. 497, 507, the Supreme Court of Georgia said:

"It is true that railroad companies cannot be required to issue through bills of ladings, or to contract to forward goods beyond their own lines. Coles v. Central R. Co., 86 Ga. 251 (12 S. E. 749); State v. W. & T. R. Co., 104 Ga. 437 (30 S. E. 891.")

The language quoted above from the Supreme Court of Georgia enabled this Court to say when the questions there discussed came here, that the order there involved "did not * * * interfere with the carrier's legitimate right of management nor deprive it of any right of contract." This Court also pointed out that the Wadley Southern "had the right to increase its earnings by encouraging shipments over the Central Railway so as to secure the longer haul." **Wadley Southern Railway Co.** v. Georgia, 235 U. S. 651. Here, where no discrimination exists or is claimed shall the Seaboard be compelled to contribute one-half the cost of $5,300, for constructing a physical connection that would take from it its long haul, and which imposes a burdensome duty of switching another carrier's traffic?

In the case of Oregon R. & N. Co. v. Fairchild, 224 U. S. 510, 531, Mr. Justice Lamar, in the opinion of the Court reviewing an order for a connection, discussed negatively what proof would justify such an order. He said: "There is no evidence of inadequate service."

Here there was no attempt to show inadequacy of transportation service. It was shown that it would help some individuals if the railroad would assume the functions of a dray.

He said: "There is no proof of public complaint or a public demand."

Here none, except from a few men who desire a drayage service, and that is no evidence of a public demand.

He said: "There is no testimony that any freight had been offered in the past for shipment between the points named, or that any such freight would be offered in the future."

That statement applies here, and is the exact situation as shown by the evidence in this case.

The Justice said: "Nor was any evidence whatever as to the volume of freight that would use these tracks, or that the saving in freight and time to the shipper would justify the admitted expense."

Here there is no evidence of any interchange of freight. The "volume" of dray service is indicated, but the expense thereof to the Seaboard exceeds the income therefrom. No transportation saving is shown, though if shippers could get their draying done for $2.00 a car that would be a special favor and benefit to them.

Not only would the Seaboard be without compensation for the cost of the connection; but the connection itself would be a continuing loss and expense.

SECOND.

THE CONNECTION WHICH MET THE APPROVAL OF THE TRIAL JUDGE WAS NEVER CONSIDERED BY THE RAILROAD COMMISSION AND APPELLANT HAD NO HEARING AS TO ITS PRACTICABILITY OR REASONABLENESS.

The proposition arises from paragraphs 2, 3, 7 and 8 of the assignment of errors.

Section 2664 of Code of Georgia quoted supra, p. 16, gives power to the Railroad Commission of Georgia to order and compel the making of physical connections only "when in its judgment (such connection is) practicable and to the interest of the public."

Two plans for a physical connection were considered by the Railroad Commission, one prepared by the engineer of the Southern Railway and one by the engineer of the Seaboard. The first was, according to testimony, dangerous,

the second too expensive. With these plans and no others before the Commission, the connection was ordered to be made, no particular plan being prescribed and only an opinion expressed as to who should pay the cost of constructing the connection. All the testimony before the Commissin was set out in an exhibit attached to the complaint. (Rec. 15 to 33.) After the order of the Commission was made, a third plan was presented to the Seaboard by the Southern Railway which plan, after being somewhat changed by the engineer of the Seaboard, is the one that met the approval of the trial judge.

This third plan contemplates the use of the right of way owned by the Seaboard, of the value of $2,000.00 (Rec. 62), and while possibly less dangerous than plan One, and very considerably less expensive than plan Two, contains some dangerous grades and would produce a situation menacing the safety of the main interstate line of the Seaboard. (Rec. 54, 57).

Not one of these questions was before the Georgia Commission, and we respectfully submit that the learned trial judge was not authorized to substitute his judgment for that of the Commission.

It is the **judgment** of the **Commission** that the statute says must be satisfied. Such statute contemplates that the Commission should base its determination upon the evidence before it, and unless an order is founded upon substantial evidence, it should be set aside.

Railroad Commission of Ga. v. Louisville & N. R. Co. 140 Ga. 817.
Louisville & N. R. Co. v. Finn, 235 U. S. 601.
Wadley Southern Co. v. Georgia, 235 U. S. 651.

The right to a hearing is admitted and appears from the authorities next supra.

What is meant by a hearing? May a Commission pass an order based on one state of facts, and, when that order

is attacked, defend by setting up a different state of facts and support these new facts by the presumption that its order is correct?

The connections considered by the Commission, plans one and two, were proven impracticable or too costly—in effect, abandoned by the counsel for the Appellees and another plan approved by the Court. This third plan was not made until after the order of the Commission had been entered.

The Courts cannot initiate any plan for a connection; that question has been left for determination by the Commission.

> Texas & Pac. Ry. Co. v. Abilene Cotton Oil Co., 204 U. S. 426.

If the facts before the Commission fail to support its orders, the burden on the carrier is met when that appears. Here Judge Newman was of the opinion that a "practicable" connection was possible by the third plan, but in arriving at this conclusion he gave weight to a presumtion against Appellant.

It is true, as said by Judge Newman, that the hearing in the Court is de novo as to complainant herein, but the purpose of the hearing is accomplished when (a) it is shown that the Commission had before it no sufficient evidence to support the order, or (b) it is shown by other testimony that the order is unreasonable or otherwise void.

THIRD.

CONGRESS HAVING ACTED ON THE SUBJECT MATTER, THE RAILROAD COMMISSION OF GEORGIA HAD NO JURISDICTION TO ORDER THE PHYSICAL CONNECTION SOUGHT TO BE SET ASIDE.

The testimony taken by the Commission on the hearing preliminary to entering the order which Appellant here seeks to set aside, showed a demand for a terminal service on

interstate business, on coal, cotton mill products (Rec. 16), tanning extract (Rec. 17) and leather goods (Rec. 17) and the evidence further shows that no additional service to intrastate transportation would result from the proposed connection.

Congress, by Section 1 of the Act to regulate Commerce, has said: Railroad includes;

> "All switches, spurs, tracks and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, and also of all freight depots, yards and grounds used or necessary in the transportation or delivery of any of said property."

Transportation includes:

> "All service in connection with the receipt, delivery, elevation and transfer in transit, ventilation, refrigeration or icing, storage and handling of property transported."

And the duty is prescribed:

> "To establish through routes and just and reasonable rates applicable thereto."

Section 7 of the Act of Congress of 1910, amending Section 1 of the original Act to Regulate Commerce, provides:

> "Any common carrier subject to the provisions of this act, upon application of any lateral, branch line of railroad, or of any shipper tendering interstate traffic for transportation, shall construct, maintain and operate upon reasonable terms a switch connection with any such lateral, branch line of railroad or private side track which may be constructed to connect with its railroad, where such connection is reasonably practicable and can be put in with safety and **will furnish sufficient business to justify the construction and maintenance of the same**; and shall furnish cars for the movement of such traffic to the best of its ability without discrimination in favor of or against any such shipper."

Section 12 of the Act of 1910, amending Section 15 of the original Act, provides:

> "The Commission may also, after hearing on a complaint, or upon its own initiative without complaint, establish through routes and joint classifications, and may establish joint rates as the maximum to be charged, and may prescribe the division of such rates as hereinbefore provided, and the terms and conditions under which such through routes shall be operated, whenever the carriers themselves shall have refused or neglected to establish voluntarily such through routes or joint classifications or joint rates; and this provision shall apply when one of the connecting carriers is a water line."

The order is to **construct** and **maintain** the connection, which means that the carriers are ordered to deliver over the connection, cars moving in interstate freight, not to a connecting carrier, but to an industry. This order directly affects interstate commerce. Section 15 further provides:

> "And in establishing such through route, the Commission shall not require any company without its consent to embrace in such route substantially less than the entire length of its railroad * * * which lies between the termini of such proposed through route, etc."

The claim was made to the trial court that the connection here involved would serve to establish a through route between the carriers affected. As has been stated, no through movement was shown to be possible. Even if some through movement were possible the law as construed by the Interstate Commerce Commission in a case similar to this is as follows:

> "It would, however, be most unfortunate if this Commission were to require the promulgation of joint through rates between older and established trunk lines and such small local carriers, irrespective of the necessities from the point of view of the community served and of justice to the trunk lines."
>
> Blakely Southern R. R. Co. v. Atlantic Coast Line R. R. Co. 26 I. C. C. 344, 350.

In St. L. S. & P. R. V. Peoria & P. U. Ry. Co., 26 I. C. C. R. 226, a connection was sought such as is here required by the Georgia Commission. There the Interstate Commerce Commission held:

> "The Commission is of the opinion that it is the duty of the defendant to perform for the complainants those services which they desire it to perform, and no others, and to be paid for such as it performs, and no others; and that the complainants are entitled to through rates on interstate traffic passing through Peoria to points on their lines, and from interstate points to industries on the line of defendant in Peoria, and from such industries to interstate points reached by complainants."

Congress has prescribed the principles that shall govern the establishment of through routes and has conferred upon an administrative body power to apply these principles to the facts of each particular situation. Here the commerce sought to be served by the proposed connection would be wholly interstate, to prescribe through routes to serve which is the duty and within the power of the Interstate Commerce Commission. Concede that such through route might also serve some commerce that was intrastate and that there would be two kinds of commerce affected by an order for a particular connection; in such case this court has said:

> "The power of the State over the subject matter ceased to exist from the moment Congress exerted its paramount and all embracing authority over the subject. We say this because the elementary and long settled doctrine is that there can be no divided authority over interstate commerce, and that the regulations of Congress on that subject are supreme."

Chicago R. I. & P. Ry. Co. v. Hardwick Farmers' Elevator Co., 226 U. S. 426.

In Southern Ry. Co. v. Reid, 222 U. S. 424, 440, Mr. Justice McKenna, after outlining what Congress had done in regulating commerce, said:

> "There is scarcely a detail of regulation which is omitted to secure the purpose to which the Interstate Commerce Act is aimed. It is true that words directly inhibitive of the exercise of State authority are not employed, but the subject is taken possession of."

After using the foregoing language Mr. Justice McKenna discusses certain of the provisions of the act to regulate commerce, mentions the obligations of the carrier to establish rates over "through routes," and at p. 442 of the opinion says:

> "By these provisions Congress **has taken possession of the field** of regulation with the purpose which we have already pointed out to keep under the eye and control of the Commission, the rates charged and the actions of the railroads in regard to them, to secure their reasonableness and to secure their impartial application."

In United States v. Union Stock Yard & Transit Co., 226 U. S. 286,303, the question was, are mere terminal facilities in Chicago subject to regulation by the Interstate Commerce Commission? Mr. Justice Day said:

> "The Interstate Commerce Act, as amended by the Hepburn Act, 34 Stat. 584, c. 3591, par. 1, applies to common carriers engaged in the transportation of persons or property from State to State wholly by railroad, and the term railroad is defined to include 'all switches, spurs, tracks, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein; and also all freight depots, yards and grounds used or necessary in the transportation or delivery of any of said property'; and transportation is defined to include 'cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation and transfer in transit, ventilation, refrigeration or icing, storage and handling of property transported'."

The conclusion is shown by the headnote, as follows:

> "The Interstate Commerce Act, as amended by the Elkins and Hepburn Acts, extends to all terminal facilities and instrumentalities. Service that is performed wholly in one State is still subject to the Act to Regulate Commerce if it is a part of interstate commerce."

In St. Louis, I. M. & S. Ry. v. Edwards, 227 U. S. 265, 269, 270, the Chief Justice, discussing demurrage rules, said:

> "In this instance, as in the one considered in the Hardwick Case, the context of the Act adds strength to the conviction produced by the definition of the first section and therefore gives rise to the conviction that the context of the Statute, not only as was held in the Hardwick Case, excludes the right of a State to regulate by penalties or demurrage charges the obligation of furnishing the means of interstate transportation, but also excludes power in a State to impose penalties as a means of compelling the performance of the duty to promptly deliver in consumation of such transportation."

Congress says, supra 22, that connections can be required only when, as a result thereof, there will be sufficient "business to justify the construction and maintenance of same." Here there will be no interchange business, and the evidence undisputed, as well as the statement of the learned trial Judge, shows that, instead of receiving compensation for the construction and maintenance of the connection, it will be operated and maintained at a loss to Appellant.

The connection will be used only to deliver cars to industrial plants. This, the Supreme Court says, is illegal.

McNeill v. Sou. Ry. Co., 202 U. S. 543.

In Missouri Pac. Ry. v. Nebraska, 217 U. S. 196, 207, Mr. Justice Holmes said:

> "But if the statute is to be stretched, or rather shrunk, to such demands as may ultimately be held reasonable by the State Court, still it requires too much. Why should the railroad pay for what, after all, are private connections? We see no reason."

Where the authority of Congress is paramount and by legislation it takes possession of the field, such legislative exercise shows the extent to which this paramount authority has gone; and if the State has authority to cultivate the same field, the exercise of such authority must rest upon a benefit to intrastate commerce. Here the only intrastate commerce that could possibly be affected is a delivery to the plant by the Seaboard of cotton seed brought to Lawrenceville over another road. Excluding, as we must, interstate commerce as a justification of the order of the State Commission, will it be contended that a possible necessity of spotting cars for the benefit of one industry constitutes a reason for compelling Appellant to furnish a part of the right of way for, and pay half the cost of a connection that will take its terminals, built up after many years and at heavy expense, and deprive it of business, substituting therefor the burdensome duty of switching cars the line haul of which was enjoyed by its competitor?

This Court has sustained orders of the Interstate Commerce Commission relating to industrial spur track delivery such as is here involved.

> Int. Comm. Comm. v. Atchison, T. & S. F. R. Co., 234 U. S. 294.

In Louisville & N. R. Co. v. Higdon, 234 U. S. 592 the shipments required to be shipped were "purely intrastate." Had such shipments been interstate it is a fair inference from the opinion that a regulation of the switching service by the State would have been held void.

This Court in Illinois Central R. Co. v. Railroad Commission of La. 236 U. S. 157, shows that the order of the Georgia Commission in this case is void, as an interference with Interstate Commerce. Here, as in that case, the connection is sought to be used for delivering interstate freight from and over such connection to Appellant's tracks for the benefit of a competing carrier; to require which is both arbitrary and violative of the Commerce clause of the Federal Constitution.

FOURTH.

THE ORDER COMPLAINED OF SERVES NO PUBLIC PURPOSE AND TAKES THE PROPERTY OF APPELLANT WITHOUT COMPENSATION AND FOR THE BENEFIT OF PRIVATE PERSONS.

See assignment of errors, paragraphs 1, 2, 7, 10, 11 and 13.

His Honor, the District Judge, treating the evidence as insufficient to warrant the order on the ground of public necessity, undertook in his opinion to sustain the order because "the public interests may at any time be such as to require the taking of trains over this line, which necessity may arise from various causes which may well be anticipated."

There was no evidence or suggestion at the trial that the connection would serve such purpose.

The proof shows that the Lawrenceville Branch is without a station, side track or any facility whatever between Lawrenceville and Suwanee, a distance of 11 miles, that it does not possess an engine or car of any description, and if it was contended that the connection would serve the Seaboard in detouring its trains over that line and the Southern from any cause, it is but fair that the Seaboard should have had the opportunity of meeting that contention by showing it is impossible to run heavy through trains, such as are operated on the Seaboard, over a branch line like the Lawrenceville Branch, and the chances are if such attempt was made the heavy train would sink to the axle and become lost in the woods between Lawrenceville and Suwanee.

It is a matter of common knowledge that in order safely to operate the heavy new engines and steel cars now fast taking the place of lighter equipment, it has been found necessary to improve the main lines of the railroads by laying heavier rails on a ballasted roadbed and to reconstruct all bridges and trestles with stronger and heavier timbers. It cannot be contended that the Lawrenceville

Branch has now, or ever will have improvements of that character on its line, with a revenue of 48 cents per month for such purposes. (Miller Rec. 17).

In the case cited in the opinion of His Honor the District Judge, of A. C. L. Ry. v. N. C. R. R. Commission, 206 U. S., page 1, the facts and situation were entirely different from the facts in this case.

For years there had existed a train connection between the Coast Line and Southern at Selma, N. C. The Coast Line ran a through train, known as 39, which did local work and stopped at all stations between Richmond, Virginia, and Selma, N. C., where previously it connected with Southern train to Raleigh. The Southern moved up the schedule of its train, because its former schedule was too fast and dangerous. The Coast Line contended it could not move up the schedule of its train 39 to meet the change, on account of connections North and the handling of the train by the Pennsylvania Road from New York to Washington, and from the latter point to Richmond by the Fredericksburg & Potomac R. R. The connection was shown to be a most important one of long standing, and was the principal outlet for passengers en route from Eastern Carolina to Raleigh.

The N. C. Commission ordered the Coast Line to make the connection, and this Court, in affirming the order held that the public convenience and necessity required the connection, and the Coast Line must make it, even though it required the running of an extra train from Rocky Mount to Selma at a loss.

The Court held that under the facts in that case a state of things existed justifying the order, and the Coast Line, in the discharge of its absolute duties, must comply with the order, even though to do so would entail financial loss.

The Seaboard is under no absolute duty in this case to join in the connection, and the expense thereof. If it was, it would at once be seen the road would be swamped with expensive connections at every point on its line touched by another road.

In rendering its decision the Court was careful to say that where the order of a commission or legislative body would compel a carrier to render a service, for a wholly inadequate compensation, to a class or classes selected for legislative favor such order would be repugnant to the Constitution, and a careful consideration of all the facts in this case will show that is exactly what is being attempted here.

Next we will consider the Jacobson case, 179 U. S. 287, cited in the opinion of the District Judge.

In that case the evidence showed that large numbers of beef and stock cattle were raised on the line of the Wisconsin, Minnesota & Pacific Railroad, and that the best market for such cattle was Sioux City, 387 miles distant by that road and its connections, requiring 48 hours to make the run, whereas if the physical connection was established at Hanley Falls, where the two roads involved intersected, the distance to Sioux City would be reduced more than one-half with a haul of only 14 hours.

The long haul of 387 miles by the old route resulted in such loss and injury to the stock, that breeders had to abandon the market at Sioux City and ship to St. Paul or Minneapolis, much poorer markets. The cattle industry was thus seriously and injuriously effected by that condition, which the Court held should be corrected by establishing the connection at Hanley Falls, and in that way reducing the distance from 387 to 181 miles, and the time of the haul from 48 hours to 14 hours.

Again, the evidence showed a large supply of wood along the line of the Great Northern System, of which the Wilmar and Sioux City Falls Railway forms a part, and that there was great demand for the wood at points on the Wisconsin, Minnesota & Pacific, where the supply of wood was about exhausted and growing less each year, therefore the public interests demanded the movement of the wood from one line to the other by means of the connection.

No similar conditions exist in this case. Not a car of wood, cattle, cotton, grain or other commodity will originate

on one road and find its destination at a market on the other.

And let it be remembered that on all shipments of cattle and wood in the Jacobson case, both roads participated in the haul and shared in the transportation charges. That is interchange of freight, and we assert the evidence in this case shows there will not be any such interchange of business between the Seaboard and the Lawrenceville Branch, in fact, the evidence shows there will be none at all.

Lastly we come to the Fairchild case, 224 U. S., 510, also cited by the opinion of the District Judge.

The Court in deciding that case recognized the power of the State Commission to order a track connection for the accommodation of State Commerce, but in doing so expressly stated that it did not mean that roads should be required to make connections at every point where their tracks come close together, regardless of the amount of business to be done; the question in each case must be determined in the light of all the facts and with a just regard to the advantages to be derived by the public and **the expense to be incurred by the carrier.**

Accepting the rulings and reasonings made by the learned Judge in the Fairchild case and applying them here, we believe that the same conclusion must be reached in this case that was reached in the Fairchild case, to-wit: The Commission's order is unreasonable and wrong, because there is nothing in the evidence to show that, within the meaning of the law, a public necessity exists for the connection.

That common carriers are and should be subject to a reasonable control by administrative bodies, acting for and in the interest of the public, is axiomatic. This control, however, must be by that administrative body having the right to exercise it. It must not be exercised without an adequate opportunity to be heard as to the particular regulation to be imposed.

Orders made by administrative bodies acting within their jurisdiction, and in the manner prescribed by law, and re-

stricted by constitutional limitations, are presumptively valid. When, however, it appears that jurisdiction to act is lacking, or that the order is arbitrary or unjust, or that the mandate is to perform a relative duty under circumstances where the private loss exceeds the public benefit, the presumption supporting the administrative conclusion disappears, and the carrier is entitled to relief from performing the order.

We here complain of an order issued by an administrative body having no control over the subject matter, an order to make a particular connection, the plan for which was adopted without a hearing had thereon, an order that is not for the benefit of the public, and one that takes property without compensation, and which, if obeyed, will take from complaints the profits which it is entitled to earn from its terminal facilities built up at great expense.

It is an inadequate description of the order to call it one for a physical connection; it should be designated as an order to take the terminal facilities of one common carrier for benefit of another.

Such an order finds no support in the decisions of this Court and there was far more reason for sustaining the order set aside in the Fairchild case, supra, than there is for sustaining this order.

Respectfully submitted,

W. G. LOVING,
W. CARROLL LATIMER,
EDGAR WATKINS,

Solicitors and Counsel for Appellant.

Seaboard Air Line Railway.

Address

W. G. LOVING,
W. CARROLL LATIMER,
Atlanta, Ga.
EDGAR WATKINS,
Washington, D. C.

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IN THE

United States Supreme Court

OCTOBER TERM, 1914

SEABOARD AIR LINE RAILWAY,
Appellant,
versus
RAILROAD COMMISSION OF GEORGIA et al,
Appellees.

No. 510

BRIEF FOR APPELLEES.

I.

STATEMENT OF CASE.

We call the attention of the Court to some facts not alluded to by appellant in its brief.

COAL AND COTTON.

Manufacturers at Lawrenceville, Georgia, can not get their coal from Virginia. If this physical connection was put in, they would get it from that source.

For some time after the Atlanta Tanning and Manufacturing Co., located at Lawrenceville, it got its coal from the Virginia mines; but it was carried by the Southern Railway to Atlanta, and there turned over to the Seaboard Air Line which would take it back from Atlanta to Lawrenceville. Afterwards the Southern refused to so transport Virginia coal to Lawrenceville, Georgia.

Testimony of C. S. Strong; Rec. 71;
Testimony of Samuel C. Carter; Rec. 89.

Logansville is a cotton market, selling 5,500 bales of cotton annually. There is a demand for this cotton at points on the Southern Railway.

Testimony of D. Y. Hodges; Rec. 78.

Manufacturers of cotton at Lawrenceville can not go into the cotton markets on the Southern Railway for cotton without this connection.

Testimony of Samuel C. Carter; Rec. 89.

They can not buy coal in Virginia markets, because S. A. L. does not reach those points.

Testimony of Samuel C. Carter; Rec. 90.

MATERIALS FOR MANUFACTURERS.

The Atlanta Tanning and Manufacturing Co. can get one extract at Brevard, N. C., only, and can not ship this extract into Lawrenceville in carload lots without this connection.

Testimony of C. S. Strong; Record 72.

In 1911 the Lawrenceville Oil Mill bought 700 or 800 tons of cottonseed upon the Southern Railway adjacent to the Lawrenceville Branch Railroad. This company had to sell this seed because it had to move by Atlanta for lack of this connection.

Testimony of A. F. Green; Record 82.

SAVINGS TO CONSIGNEES AND SHIPPERS.

The Atlanta Tanning and Manufacturing Co. would save 75 cents per ton on coal and 25 cents per 100 pounds on one extract if this connection was put in.

Testimony of C. S. Strong; Rec. 72.

The Lawrenceville Fertilizer Co., situated at Lawrenceville, has markets on the Southern Railway for 2,000 tons of its ferilizers. This company has to unload this fertilizer from cars of the Seaboard Air Line Railway into its warehouse, and transfer it there to cars of the Lawrenceville Branch Railroad at a cost of $400. This company will save this annual expense by this connection.

Testimony of A. F. Green; Rec. 82.

With this physical connection J. A. Ambrose & Co. could have cars placed at their plant, load right there, save about $8 per car and give the S. A. L. more business if this connection was operated.

Testimony of J. L. Exam; Rec. 85.

The lack of this physical connection makes the Allen Manufacturing Co. pay from 50 cents to a dollar more per ton for its fiber.

Testimony of L. R. Martin; Rec. 76.

PUBLIC DEMAND FOR THIS CONNECTION.

There is a public demand for this physical connection.

See testimony of J. L. Exam; Rec. 85.

There was great rejoicing in Lawrenceville when the gauge of the Lawrenceville Branch was made standard, and the physical connection was thus made possible.

Testimony of C. S. Strong; Rec. 73.

The Allen Manufacturing Co. has requests from a great many customers for their goods to come over the Southern.

Testimony of L. R. Martin; Rec. 75.

Logansville, on the Logansville Branch of the Seaboard Air Line Railway, is a town of about 750 inhabitants, and markets annually about 5,500 bales of cotton. There is a demand for that cotton on the Southern Railway, and it can not be shipped to many points on this railroad without this connection.

Testimony of D. T. Hodges; Rec. 78.

The Allen Manufacturing Company would give more business to the Southern and the Lawrenceville Branch Railroad if this connection was put in.

Testimony of L. R. Allen; Rec. 77.

Customers of W. A. Cooper, who ship wood from Logansville and Grayson on the Logansville Branch of the Seaboard Air Line Railway, wanted wood shipped from these points over the Logansville Branch to Lawrenceville, thence over the Lawrenceville Branch to the Southern Railway, and over the latter road to Atlanta. This could not be done because of lack of this connection.

Testimony of W. A. Cooper; Rec. 80.

The Lawrenceville Oil Mill could handle twenty-five cars of cottonseed from the Southern if this connection was put on.

Testimony of W. A. Cooper; Rec. 80.

Ambrose & Co., with mills on Lawrenceville Branch Railroad at Lawrenceville, buy most of their lumber from Alabama and Florida. They can't buy from neighboring towns on Seaboard, because they would have to pay drayage from the Seaboard; but they could save this prohibitive draying charge and thus be able to buy their lumber at nearby towns on the Seaboard if they had this connection.

Testimony of J. L. Exam; Record 85.

By lack of this physical connection the Lawrenceville Oil Mills is deprived of at least half of the territory in the surrounding country.

Testimony of W. A. Cooper; Rec. 80.

BENEFITS TO SEABOARD AIR LINE RAILWAY.

The operation of this physical connection would give additional freight to the S. A. L. Ambrose & Co. might have more freight to come over the S. A. L. They could buy lumber from nearby towns on that road if this connection was in.

They would give the S. A. L. more of their output.

Testimony of J. L. Exam; Rec. 85.

Seaboard Air Line would get switching charges on fifteen or sixteen cars of extract which the Atlanta Tanning and Manufacturing Co. would ship over the Lawrenceville Branch Railroad if this connection was put in.

Testimony of C. S. Strong; Rec. 72.

The Allen Manufacturing Co. gets its fiber over the Southern. The S. A. L. gets no revenue from this movement, but would get switching charges on this material if this connection was put in.

Testimony of L. R. Martin; Rec. 76.

If this connection was in the S. A. L. would receive the switching charges which the Lawrenceville Oil Mill would pay for its cottonseed meal and hulls which now move over the Lawrenceville Branch; and from which it now gets no revenue.

Testimony of A. T. Green; Rec. 82.

One-half of the output of the Lawrenceville Mfg. Co. now goes over the Lawrenceville Branch, and the S. A. L. gets no

revenue on its products. With this connection in, the S. A. L. would get switching charges on this freight.

Testimony of Samuel C. Carter; Rec. 89.

CONNECTION IS PRACTICABLE.

A. R. Artman, Assistant Engineer for the S. A. L. Ry., says that he does not dispute that the third plan is practicable.

His testimony; Rec. 58.

This connection, by the first plan, would be practicable and feasible, according to the testimony of G. H. Dugan, Assistant Engineer of the Southern Railway.

Testimony of G. H. Dugan; Rec. 86.

COST OF CONNECTION IS REASONABLE.

Eliminating cost of right of way, this connection, by the last or third plan, would cost $1,800.

Testimony of H. R. Artman; Rec. 55.

The cost by the first plan, including right of way, according to the testimony of G. H. Dugan, Assistant Engineer of the Southern Railway, would be $1,900.

Testimony of G. H. Dugan; Rec. 86.

The proposed connection by the Artman plan is practicable, feasible and safe.

Testimony of G. H. Dugan; Rec. 86.

Appellant in its bill (see par. 4 thereof on page 4 of the Record) alleged that evidence was introduced for and against the order of the Commission, that a copy thereof is attached to its bill as Exhibit A, and that this evidence wholly fails to show any reason or right for the entry of this order.

Appellees in their answer denied that Exhibit A to appellant's bill embraced all the evidence on which the Commission acted in making this order.

Appellant introduced no evidence whatever to sustain this allegation.

CONCLUSION.

There is not only a public demand, but a public necessity for this connection. A carload of freight, originating at Duluth on the Southern, a few miles south of Suwanee, the junction point of the Southern and Lawrenceville Branch Railroad, destined for Logansville, the Eastern terminus of the Logansville Branch of the Seaboard, would have to move, for lack of this connection, from Suwanee over the Southern to Atlanta, from Atlanta to Lawrenceville over the Seaboard, and from Lawrenceville over the Logansville Branch Road to Logansville. With this connection, such a carload would move, instead of this circuitious route, over the short and direct route from Duluth to Suwanee over the Southern, thence over the Lawrenceville Branch Road to Lawrenceville, and thence over the Logansville Branch Road to destination.

These illustrations could be multiplied **ad infinitum**, as inspection of the map of this situation contained in Appellant's brief will show.

Take another view. If there is a disastrous wreck on the S. A. L. just beyond Lawrenceville, that company could detour its trains over the Lawrenceville Branch to Suwanee, thence over the Southern to Gainesville, thence over the Georgia Midland to Athens, and thence on its main line North.

While the most insistent demand for this connection comes from manufacturing plants at Lawrenceville, which wish to avoid the cost of drayage, there is, independent of this demand, a transportation need for this physical connection between these railways.

While this connection will provide an instrumentality, which will furnish a switching service to these manufacturing indus-

tries at Lawrenceville, it will also furnish the means of intrastate and interstate transportation.

II.

AUTHORITIES AND ARGUMENT FOR APPELLEES.

A.

BURDEN AND PRESUMPTION.

Error must affirmatively appear before there can be a reversal, and the burden is on the plaintiff to show it.

Mercantile Trust Co. v. Hensey, 205 U. S., 298, 306.
Carroll v. Peake, 1 Pet. 18, 23.
Bognell v. Broderick, 13 Pet. 436.
Southern Railway Co. v. Atlanta Stove Works, 128 Ga., 207, 222.

The findings of the Railroad Commission of Georgia, having been concurred by the District Court and the Circuit Court of Appeals, will not be interfered with, unless the record establishes that clear and unmistakable error has been committed.

Illinois C. R. Co. v. Interstate Com. Com., 206 U. S., 441, 445.
Cincinnati, etc. R. Co. v. Int. Com. Com., 206 U. S., 142, 154.

We submit that the record in this case does not establish that clear and unmistakable error has been committed.

B.

RELUCTANCE OF THIS COURT TO INTERFERE WITH ADMINISTRATIVE ORDERS.

Courts are reluctant to interfere with the laws of a State or with the tribunals constituted to enforce them; and doubts will be resolved in favor of the State and its tribunals.

Grand Trunk Ry. Co. v. Michigan R. Com., 231 U. S., 467.

C.

ASSIGNMENTS OF ERROR Nos. 1, 6, 9 AND 13.

It is insisted by counsel for appellant that this order is arbitrary, unreasonable and without substantial evidence to support it.

Counsel for appellant assumes that this order requires this physical connection for the sole purpose of furnishing switching service and of saving drayage to industries. This assumption is based upon an erroneous construction of this order.

This physical connection is ordered for the purpose of providing for transportation service; and the switching service is only incident to the transportation service.

For this reason it is unnecessary to inquire whether the Railroad Commission of Georgia can constitutionally pass an order requiring a physical connection between two railroads for the sole purpose of furnishing a switching service between them, and for the purpose of saving drayage to industries.

We do not admit that an order can not be constitutionally made for these purposes. Nor do we admit that this question has been decided by this Court in

Central Stock Yards v. L. & N. R. Co., 192 U. S., 568.

The valuable terminals of one railway can not be thrown open to another competitive railroad without just compensation.

Central Stock Yards v. L. & N. R. Co., 192 U. S., 568.
L. & N. R. Co. v. Stock Yards Co., 212 U. S., 132.

This order does not require the Seaboard Air Line Railway to give up its terminals to the Lawrenceville Branch Railroad Company. It does not undertake to fix the compensation which should be paid by the respective companies for switch-

ing cars from one line to the other. It simply requires a physical connection between them for the purpose of transporting freight originating on one line and destined to points on the other line.

It is further insisted that this order is unreasonable because these companies can not be required to issue through bills of lading. That question is not involved in this case. This order does not in the remotest degree require these companies to issue through bills of lading.

However, this question was not involved in the case of the Wadley Southern Railway Co. v. The State, 137 Ga. 497, 507, and what was said in that case on this point was purely **an obiter dictum.**

There can be no doubt that these companies are now required by law to issue through bills of lading in case of interstate shipments; and the Supreme Court of Georgia would now hardly hold, in the present state of the law, when the question is squarely presented, that through bills of lading can not be required in intrastate shipments.

D.

THE STATUTE OF GEORGIA, EMPOWERING THE RAILROAD COMMISSION TO REQUIRE PHYSICAL CONNECTIONS, IS CONSTITUTIONAL.

There can be no doubt of the power of a State, acting through an administrative body, to require railroad companies to make track connections.

Wisconsin R. R. Co. v. Jacobson, 179 U. S., 287.
Oregon R. & N. Co. v. Fairchild, 224 U. S., 510, 528.
Grand Trunk Ry. v. Michigan Railway Com., 231 U. S., 457, 468.

There must be public necessity justifying the order, and it must be reasonable.

In determining the reasonableness of such an order, the Court must consider all the facts, the places and persons inter-

ested, volume of business to be affected, the saving of time and expense to the shipper, as against the cost and expense to the carrier.

Oregon R. & N. Co. v. Fairchild, 224 U. S., 510, 528.

If this order was based upon a finding which is indisputably contrary to the evidence, or, if the facts found do not, as a matter of law, support this order, then the same would be void.

Int. Com. Com. v. N. & R. Co., 227 U. S., 88.

We submit, that the evidence before the Commission, and that in the District Court support this order; and that the finding of the Commission, the decree of the District Court and the affirmance of the judgment of the latter by the Circuit Court of Appeals, are not indisputably contrary to the evidence.

The evidence shows that there are a public demand and public necessity justifying this order. The places and persons interested and to be served, the volume of business, the saving in time and expense to shippers, and the small cost and expense to the carriers make this order reasonable.

E.

ASSIGNMENTS OF ERROR Nos. 2, 3, 7 AND 8.

In these assignments it is contended that the connection which met the approval of the trial judge was never considered by the Railroad Commission; and that appellant had no hearing as to its practicability or its reasonableness.

The Railroad Commission of Georgia has the power and authority, when in its judgment practicable and to the interest of the public, to order and compel the making and operating

of physical connections between lines of railroad crossing or intersecting each other, or entering the same incorporated town or city in this State.

Civil Code of Georgia, Sec. 2664.

Exercising the power conferred upon it by this statute, the Railroad Commission of Georgia determined that a physical connection between these railroads at Lawrenceville, Georgia, was practicable and to the interest of the public.

On the hearing before the Commission there were introduced in evidence maps showing two plans for this connection. One was prepared by the Engineer of the Southern Railway, and the other by the Engineer of the Seaboard. After considering all the evidence, including these two plans, the Commission found that the connection was "practicable and to the interest of the public"; and without adopting either plan, ordered these railroads to build this connection. The Commission did not designate the route which should be followed; but left this to be determined by the railroads affected. Appellant makes this distinct averment in Par. 18 of its bill.

After this order was passed, the Seaboard Air Line Railway prepared a plan and map for this connection which is entirely feasible, practicable and inexpensive.

The domicile of the Railroad Commission of Georgia is fixed at the Capitol of the State in Atlanta, Fulton County; and no court of this State, other than those of Fulton County, shall have or take jurisdiction in any suit or proceeding brought or instituted against said Commission or any of its orders or rules.

Civil Code of Georgia, Sec. 2625.

This Court, construing this Section of the Code of Georgia, has properly held, that it provided for the judicial review of the orders of the Commission; and that any order of the Commission can be set aside when the same is found to be unreasonable, arbitrary, or impracticable.

Wadley Sou. R. Co. v. Georgia, 235 U. S., 651.

Appellant filed its bill attacking this order on the ground that it was void because under the evidence before the Commission it was shown to be arbitrary and unreasonable, and upon other independent grounds.

When the carrier is permitted to file a bill in equity attacking an administrative order in the usual and ordinary manner and after hearing before the Commission, without being restricted by statute as to evidence that might be considered by the Court, the proceeding is **de novo**; and both parties can introduce new additional evidence to attack or support the order.

Oregon R. & N. Co. v. Fairchild, 224 U. S., 527.

Under our statute, above quoted, a carrier, attacking an order of the Railroad Commission of Georgia, is not confined to the evidence before the Commission. The District Judge could consider any evidence elucidating the questions involved in this litigation. In determining whether the plan was practicable or not, he could well consider a plan furnished by the appellant itself.

The Commission and the District Court had before it the testimony of Mr. H. W. Miller, who swore that Plan No. 1, was entirely practicable and could be safely operated.

Rec. P. 17.

The reasonable cost of this connection, including right of way, is about $1,900.

Testimony of G. H. Dugan; Rec. P. 86.

It does not appear that the District Court based this decree upon Plan No. 3. In his opinion, Judge Newman only said: "The Commission has put in evidence a plan by which it is claimed that the connection can be made for something like $1,800.00, $2,000.00 anyway." The District Judge only considered this evidence in determining the contention of appellant that the order was impracticable.

Both plans, No. 1 and No. 3, were in evidence. It was shown by the evidence before the Commission that Plan No. 1 was entirely practicable, could be safely operated, and the connection made at a cost, including right of way, of about $1,900.00.

F.

NO INTERFERENCE WITH INTERSTATE COMMERCE.

It is insisted by appellant, that the statute of Georgia, under which this order was made, and the order itself, are unconstitutional and void because in conflict with the Commerce Clause of the Constitution of the United States.

Appellant urges that Congress has acted upon this subject-matter, and that for this reason the Railroad Commission of Georgia had no jurisdiction to order this physical connection.

Appellant insists that this physical connection would be an instrumentality used solely in interstate business and not at all in intrastate transportation.

The evidence shows that this instrumentality of transportation will be used in both interstate and intrastate commerce.

As far as Congress has yet gone is to require common carriers, subject to the Act to regulate commerce, upon application of any lateral, branch line of railroad, or any shipper tendering interstate traffic for transportation, to construct and operate a switch connection with such lateral, branch line of railway.

36 Statutes at Large, 539, 547.

The power of the Interstate Commerce Commission does not extend to ordering a connection wherever it sees fit, but is limited to a certain and somewhat narrow class of lines. The most obvious examples of such lines are those that are de-

pendent upon and incident to the main line—feeders, such as may be built from mines, or forests to bring coal, ore or lumber to the main line for shipment.

United States v. B. & O. S. W. Ry., 226 U. S., 14, 19.

Under this definition the Lawrenceville Branch Railroad is not a lateral or branch line of the Seaboard Air Line.

Because Congress has dealt with switch connections for this narrow class of branch lines with main lines, does this action of Congress prohibit the States from taking action over other classes?

In matters of local concern and not of national importance, the State may act for their control and management until Congress interferes and supersedes State action. Such exercise of authority is regarded as merely affecting interstate commerce incidentally or remotely, and not constituting a regulation of it in the meaning of the constitution.

Case of State Freight Tax, 15 Wall, 279.
County of Mobile v. Kimball, 102 U. S., 691.
Bowman v. Chicago, etc. R. Co., 125 U. S., 465, 485.

A State statute is not to be deemed a regulation of commerce among the States, simply because it may incidentally or indirectly affect such commerce.

Missouri etc. R. Co. v. Haber, 169 U. S., 613, 626.
Chicago etc. R. Co. v. Solan, 169 U. S., 133.
Western Union Tel. Co. v. James, 162 U. S., 650.

This order, requiring the Seaboard Air Line Railway and the Lawrenceville Branch Railroad Company to connect their tracks within the city limits of Lawrenceville, for the interchange of traffic between said lines, is within the regulating power of the State and Commission; and is not unconstitutional as interfering with interstate commerce, or depriving the carriers of their property without due process of law.

Grand Trunk Ry. v. Michigan Ry. Com., 231 U. S., 458.

This order of the Railroad Commission is a regulation of the business of appellant, and not an appropriation of its terminal facilities for the use and benefit of the Lawrenceville Branch Railroad.

Wisconsin etc. R. Co. v. Jacobson, 179 U. S., 287.
Minneapolis & St. L. R. R. Co. v. Minnesota, 186 U. S., 257.
Oregon R. R. & N. Co. v. Fairchild, 224 U. S., 519, 528.
Grand Trunk Ry. v. Michigan Ry. Com., 231 U. S., 457, 468.

The true question in this case is: Can a State require railroad corporations to make physical connections which will enable them to engage in interstate and intrastate commerce?

If a State can not provide for the creation of such instrumentalities of interstate transportation, then it can not create railroad corporations at all, if they become instrumentalities of interstate commerce.

This order does not establish any through route and through rate for interstate commerce.

It is true that State Railroad Commissions can not regulate the switching of cars engaged in interstate commerce, and fix the rates for such service. Such action is unconstitutional as a burden upon, and an attempt to regulate, interstate commerce.

Illinois Central R. Co. v. Railroad Com. of La., 236 U. S., 157.

This order of the Commission neither provides for switching cars engaged in interstate commerce, nor does it fix the rates for such service. It simply requires the construction of any instrumentality which will be used in both intrastate and interstate commerce. Instead of burdening and regulating interstate commerce, it facilitates such commerce. This order is a crying John, The Baptist, in the wilderness of transportation, preparing and making straight a way for interstate commerce.

G.

ASSIGNMENTS OF ERROR Nos. 1, 2, 10, 11 AND 13.

It is lastly insisted by appellant that this order serves no public purpose and takes its property without compensation and for the benefit of private persons. We have already undertaken to show that it serves the public [redacted], and does not take the property of appellant without compensation for the benefit of private persons.

Railroad companies are organized for the public interest and to subserve primarily the public good and convenience.

Grand Trunk Ry. Co. v. Michigan Ry. Com., 231 U. S., 457, 470.

It can require a carrier to run its trains so as to connect with another carrier, although this is done at a loss.

A. C. L. Ry. v. N. C. R. R. Com., 206 U. S., 1.

So, the State can compel physical connections between railroads, when the public interest demands it, although the construction of such connections require the expenditure of money by such companies, and entails on them loss of business and revenue.

Wisconsin etc. R. Co. v. Jacobson, 179 U. S., 289.
Minneapolis & St. L. R. R. Co. v. Minnesota, 186 U. S., 287.
Oregon R. R. & N. Co. v. Fairchild, 224 U. S., 519, 528.

A railway company accepts its franchise from the State subject to the condition that it will conform at its own expense to any reasonable regulation.

C., I. & W. R. Co. v. Connorsville, 218 U. S., 336.

It is true that in a proceeding brought to compel a carrier to furnish facilities not included in its absolute duties, the question of expense is of controlling importance.

Oregon R. & N. Co. v. Fairchild, 224 U. S., 511.

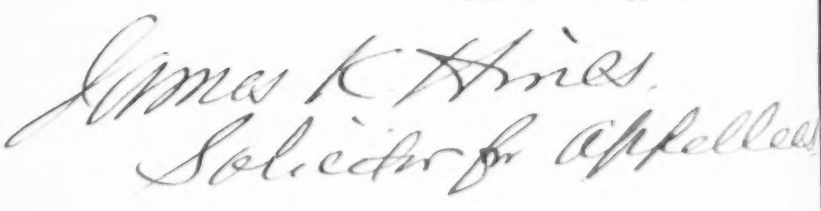
In this case connection can be made for less than $2,000, and at a cost to appellant of less than $1,000.

A State is competent to create a Commission and give it the power of regulating railroads and investigating conditions upon which regulations may be directed; and the judiciary will only interfere with such a commission, when it appears that it has clearly transcended its powers.

Grand Trunk Ry. Co. v. Railroad Com., 231 U. S., 457.

JAMES K. HINES,

Solicitor for Appellees.



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